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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 25, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

RIN 0580-AA11

United States Standards for Rice

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is amending the United States Standards for Rough Rice, Brown Rice for Processing, and Milled Rice to establish a special grade for glutinous rice. Glutinous rice (also known as waxy or sweet rice) is characterized by its chalky appearance. Chalky (nontranslucent) kernels are considered undesirable in nonglutinous rice, and the U.S. Standards for Rice contain grade limits for them. But, in the glutinous rice market, the chalky characteristic is acceptable. Therefore, to facilitate the marketing of glutinous rice, FGIS is establishing special grades for all types and classes of glutinous rice and revising the U.S. Standards for Rice so that the grading factor "chalky kernels" does not apply to rice assigned this special grade.

EFFECTIVE DATE: December 2, 1991.

FOR FURTHER INFORMATION: George Wollam, Federal Grain Inspection Service, USDA, room 0619 South Building, P.O. Box 96454, Washington, DC, 20090-6454, telephone (202) 382-0231.

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5)).

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Background

The U.S. Standards for Rough Rice (7 CFR 68.201 *et seq.*), Brown Rice for Processing (7 CFR 68.251 *et seq.*), and Milled Rice (7 CFR 68.301 *et seq.*) were specifically designed to facilitate the marketing of nonglutinous rice (common rice). The standards do not accommodate glutinous rice (waxy or sweet rice), which has only recently been grown and marketed in the United States. As a result, FGIS has been petitioned by organizations that market short grain glutinous rice to revise the standards to make them more applicable to glutinous rice.

Glutinous rice and nonglutinous rice are very similar in size and shape, but they have notable endosperm differences. Glutinous rice is characterized by an opaque endosperm containing virtually all amylopectin-type starch. Therefore, glutinous rice kernels appear chalky. A chalky appearance in glutinous rice is considered indicative of properties that make this rice useful in the production of particular speciality products and therefore enhances its appeal for such uses.

Nonglutinous rice, on the other hand, is normally translucent. A chalky appearance in nonglutinous rice is considered undesirable. Consequently, the U.S. Standards for Rice provide specific maximum limits for the amount of chalky kernels allowed in all types and classes of rice. For example, U.S. No. 2 Short Grain Milled Rice may not contain more than 4.0 percent chalky kernels.

As a result, glutinous rice normally is graded U.S. Sample grade (the lowest grade in the standards) because of excess chalky kernels. This, according to members of the glutinous rice industry, is inhibiting the marketing of this rice.

In the February 8, 1990, **Federal Register** (55 FR 4582), FGIS proposed to amend the U.S. Standards for Rough Rice (7 CFR 68.201 *et seq.*), Brown Rice for Processing (7 CFR 68.251 *et seq.*), and Milled Rice (7 CFR 68.301 *et seq.*) to establish a subclass for short grain sweet rice. Interested persons were invited to submit written comments on the proposed rule.

During the 60-day comment period, three comments were received. The comments, which were essentially identical, supported establishment of standards for sweet rice but suggested that the term "glutinous rice" be used instead of "sweet rice." The commenters also recommended that the standards be broadened to encompass all glutinous varieties of long grain, medium grain, and short grain rice that contain "more than 50 percent chalky kernels." In addition, they suggested that "nonchalky kernels" be considered as a grading factor in glutinous rice.

On April 8, 1991, FGIS published a proposal in the **Federal Register** (56 FR 14213) that modified the original proposed rule by:

1. Changing the term "sweet rice" to "glutinous rice;"
2. Deleting the proposed establishment of a subclass for short grain sweet rice;
3. Establishing a special grade for glutinous rough rice, glutinous brown rice for processing, and glutinous milled rice;
4. Defining glutinous rice, in part, as rice that contains more than 50 percent chalky kernels and including in this definition grade limits for nonchalky kernels; and
5. Excluding the grading factor "chalky kernels" from being applied to glutinous rice.

Interested parties were invited to participate in the rulemaking process by submitting written comments on the modified proposed rule. The 60-day comment period ended June 7, 1991. Two comments were received. One comment was from a rice milling company that

markets glutinous rice in California and the other was from an industry association. Both agreed with the proposal as written.

Final Action

Accordingly, FGIS is revising:

1. Section 68.210 by adding footnote number 2 to the factor column for "Chalky kernels." The new footnote directs users to reference § 68.212(d) for information about glutinous rough rice. Footnotes that are presently numbered 2 and 3 are renumbered 3 and 4, respectively.

2. Section 68.212 by adding a new subsection, § 68.212(d), that defines glutinous rough rice and establishes grade limits for nonchalky kernels.

3. Section 68.213 by adding a special grade designation for glutinous rough rice.

4. Section 68.261 by adding footnote number 2 to the factor column for "Chalky kernels." The new footnote directs users to reference § 68.263(c) for information about glutinous brown rice for processing. Footnotes that are presently numbered 2 and 3 are renumbered 3 and 4, respectively.

5. Section 68.263 by adding a new subsection, § 68.263(c), that defines glutinous brown rice for processing and establishes grade limits for nonchalky kernels.

6. Section 68.264 by adding a special grade designation for glutinous brown rice for processing.

7. Section 68.310 by adding footnote number 2 to the factor column for "Chalky kernels." The new footnote directs users to reference § 68.315(e) for information about glutinous milled rice. Footnotes that are presently numbered 2, 3, 4, and 5 are renumbered 3, 4, 5, and 6, respectively.

8. Section 68.311 by adding footnote number 3 to the factor column for "Chalky kernels." The new footnote directs users to reference § 68.315(e) for information about glutinous milled rice.

9. Section 68.312 by adding footnote number 3 to the factor column for "Chalky kernels." The new footnote directs users to reference § 68.315(e) for information about glutinous milled rice. Footnotes that are presently numbered 3 and 4 are renumbered 4 and 5, respectively.

10. Section 68.315 by adding a new subsection, § 68.315(e), that defines glutinous milled rice and establishes grade limits for nonchalky kernels.

11. Section 68.316 by adding a special grade designation for glutinous milled rice.

List of Subjects in 7 CFR Part 68

Administrative practice and procedures, Agricultural commodities, Rice.

For reasons set forth in the preamble, 7 CFR part 68 is amended as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

1. The authority citation for part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. Section 68.210 is revised to read as follows:

Grades, Grade Requirements, and Grade Designations

§ 68.210 Grades and grade requirements for the classes of Rough Rice. (See also § 68.212.)

Grade	Maximum limits of—							
	Seeds and heat-damaged kernels			Red rice and damaged kernels (singly or combined) (Percent)	Chalky kernels [1] [2]			Color requirements [1] (minimum)
	Total (singly or combined) (Number in 500 grams)	Heat-damaged kernels and objectionable seeds (singly or combined) (Number in 500 grams)	Heat-damaged kernels (Number in 500 grams)		In long grain rice (Percent)	In medium or short grain rice (Percent)	Other types [3] (Percent)	
U.S. No. 1	4	3	1	0.5	1.0	2.0	1.0	Shall be white or creamy.
U.S. No. 2	7	5	2	1.5	2.0	4.0	2.0	May be slightly gray.
U.S. No. 3	10	8	5	2.5	4.0	6.0	3.0	May be light gray.
U.S. No. 4	27	22	15	4.0	6.0	8.0	5.0	May be gray or slight rosy.
U.S. No. 5	37	32	25	6.0	10.0	10.0	10.0	May be dark gray or rosy.
U.S. No. 6	75	75	75	[4] 15.0	15.0	15.0	10.0	May be dark gray or rosy.
U.S. Sample grade	U.S. Sample grade shall be rough rice which: (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 6, inclusive; (b) contains more than 14.0 percent of moisture; (c) is musty, or sour, or heating; (d) has any commercially objectionable foreign odor; or (e) is otherwise of distinctly low quality.							

[1] For the special grade Parboiled rough rice, see § 68.212(b).
[2] For the special grade Glutinous rough rice, see § 68.212(d).
[3] These limits do not apply to the class Mixed Rough Rice.
[4] Rice in grade U.S. No. 6 shall contain not more than 6.0 percent of damaged kernels.

3. Section 68.212(d) is added to read as follows:

§ 68.212 Special grades and special grade requirements.

* * * * *

(d) *Glutinous rough rice.* Glutinous rough rice shall be special varieties of rice (Oryza sativa L. glutinosa) which contain more than 50 percent chalky kernels. Grade U.S. No. 1 shall contain not more than 1.0 percent of nonchalky kernels, grade U.S. No. 2 not more than 2.0 percent of nonchalky kernels, grade U.S. No. 3 not more than 4.0 percent of nonchalky kernels, grade U.S. No. 4 not more than 6.0 percent of nonchalky kernels, grade U.S. No. 5 not more than 10.0 percent of nonchalky kernels, and

grade U.S. No. 6 not more than 15.0 percent of nonchalky kernels.

Note: The maximum limits for "Chalky kernels" in § 68.210 are not applicable to the special grade "Glutinous rough rice."

4. Section 68.213 is revised to read as follows:

§ 68.213 Special grade designation.

The grade designation for infested, parboiled, smutty, or glutinous rough rice shall include, following the class, the word(s) "Infested," "Parboiled Light," "Parboiled," "Parboiled Dark," "Smutty," or "Glutinous," as warranted, and all other information prescribed in § 68.211.

5. Section 68.261 is revised to read as follows:

Grades, Grade Requirements, and Grade Designations

§ 68.261 Grade and grade requirements for the classes of Brown Rice for Processing. (See also § 68.263.)

Grade	Maximum limits of—									
	Paddy kernels		Seeds and heat-damaged kernels			Red rice and damaged kernels (singly or combined) (percent)	Chalky kernels [1, 2] (percent)	Broken kernels removed by a 6 plate or a 6½ sieve [3] (percent)	Other types [4]	Wellmilled kernels (percent)
	Percent	Number in 500 grams	Total (singly or combined) (number in 500 grams)	Heat-damaged kernels (number in 500 grams)	Objectionable seeds (number in 500 grams)					
U.S. No. 1	—	20	10	1	2	1.0	2.0	1.0	1.0	1.0
U.S. No. 2	2.0	—	40	2	10	2.0	4.0	2.0	2.0	3.0
U.S. No. 3	2.0	—	70	4	20	4.0	6.0	3.0	5.0	10.0
U.S. No. 4	2.0	—	100	8	35	8.0	8.0	4.0	10.0	10.0
U.S. No. 5	2.0	—	150	15	50	15.0	15.0	6.0	10.0	10.0
U.S. Sample grade	U.S. Sample grade shall be brown rice for processing which (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5, inclusive; (b) contains more than 14.5 percent of moisture; (c) is musty, or sour, or heating; (d) has any commercially objectionable foreign odor; (e) contains more than 0.2 percent of related material or more than 0.1 percent of unrelated material; (f) contains two or more live weevils or other live insects; or (g) is otherwise of distinctly low quality.									

[1] For the special grade Parboiled brown rice for processing, see § 68.263(a).
[2] For the special grade Glutinous brown rice for processing, see § 68.263(c).
[3] Plates should be used for southern production rice and sieves should be used for western production rice, but any device or method which gives equivalent results may be used.
[4] These limits do not apply to the class Mixed Brown Rice for Processing.

6. Section 68.263(c) is added to read as follows:

§ 68.263 Special grades and special grade requirements.

* * * * *

(c) *Glutinous brown rice for processing.* Glutinous brown rice for processing shall be special varieties of rice (Oryza sativa L. glutinosa) which contain more than 50 percent chalky kernels. Grade U.S. No. 1 shall contain not more than 1.0 percent of nonchalky kernels, grade U.S. No. 2 not more than 2.0 percent of nonchalky kernels, grade U.S. No. 3 not more than 4.0 percent of nonchalky kernels, grade U.S. No. 4 not more than 6.0 percent of nonchalky kernels, and grade U.S. No. 5 not more than 10.0 percent of nonchalky kernels.

Note: The maximum limits for "Chalky kernels" in § 68.261 are not applicable to the special grade "Glutinous brown rice for processing."

7. Section 68.264 is revised to read as follows:

§ 68.264 Special grade designation.

The grade designation for parboiled, smutty, or glutinous brown rice for processing shall include, following the class, the word(s) "Parboiled," "Smutty," or "Glutinous," as warranted, and all other information prescribed in § 68.262.

8. Section 68.310 is revised to read as follows:

Grades, Grade Requirements, and Grade Designations

§ 68.310 Grades and grade requirements for the classes Long Grain Milled Rice, Medium Grain Milled Rice, Short Grain Milled Rice, and Mixed Milled Rice. (See also § 68.315.)

Grade	Maximum limits of—											
	Seeds, heat damaged, and paddy kernels (singly or combined)		Red rice and damaged kernels (singly or combined) (percent)	Chalky kernels [1, 2]		Broken kernels				Other types [4]		Color requirements [1]	Minimum milling requirements [3]
	Total (Number in 500 grams)	Heat damaged kernels and objectionable seeds (Number in 500 grams)		In long grain rice (percent)	In medium or short grain rice (percent)	Total (percent)	Removed by a 5 plate [3] (percent)	Removed by a 6 plate [3] (percent)	Through a 6 Sieve [3] (percent)	Whole kernels (percent)	Whole and broken kernels (percent)		
U.S. No. 1.	2	1	0.5	1.0	2.0	4.0	0.04	0.1	0.1	—	1.0	Shall be white or creamy.	Well milled.
U.S. No. 2.	4	2	1.5	2.0	4.0	7.0	0.06	0.2	0.2	—	2.0	May be slightly gray.	Well milled.

Grade	Maximum limits of—											Color requirements [1]	Minimum milling requirements [5]
	Seeds, heat damaged, and paddy kernels (singly or combined)		Red rice and damaged kernels (singly or combined) (percent)	Chalky kernels [1, 2]		Broken kernels				Other types [4]			
	Total (Number in 500 grams)	Heat damaged kernels and objectionable seeds (Number in 500 grams)		In long grain rice (percent)	In medium or short grain rice (percent)	Total (percent)	Removed by a 5 plate [3] (percent)	Removed by a 6 plate [3] (percent)	Through a 6 Sieve [3] (percent)	Whole kernels (percent)	Whole and broken kernels (percent)		
U.S. No. 3.	7	5	2.5	4.0	6.0	15.0	0.1	0.8	0.5	—	3.0	May be light gray	Reasonably well milled.
U.S. No. 4.	20	15	4.0	6.0	8.0	25.0	0.4	2.0	0.7	—	5.0	May be gray or slightly rosy.	Reasonably well milled.
U.S. No. 5.	30	25	[6] 6.0	10.0	10.0	35.0	0.7	3.0	1.0	10.0	—	May be dark gray or rosy.	Lightly milled.
U.S. No. 6.	75	75	[6] 15.0	15.0	15.0	50.0	1.0	4.0	2.0	10.0	—	May be dark gray or rosy.	Lightly milled.

U.S. Sample grade: U.S. Sample grade small be milled rice of any of these classes which: (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 6, inclusive; (b) contains more than 15.0 percent of moisture; (c) is musty or sour, or heating; (d) has any commercially objectionable foreign odor; (e) contains more than 0.1 percent of foreign material; (f) contains two or more live or dead weevils or other insects, insect webbing, or insect refuse; or (g) is otherwise of distinctly low quality.

[1] For the special grade Parboiled milled rice, see § 68.315(c).
[2] For the special grade Glutinous milled rice, see § 68.315(e).
[3] Plates should be used for southern production rice; and sieves should be used for western production rice, but any device or method which gives equivalent results may be used.
[4] These limits do not apply to the class Mixed Milled Rice.
[5] For the special grade Undermilled milled rice, see § 68.315(d).
[6] Grade U.S. No. 6 shall contain not more than 6.0 percent of damaged kernels.

9. Section 68.311 is revised to read as follows:

§ 68.311 Grades and grade requirements for the class Second Head Milled Rice. (See also § 68.305.)

Grade	Maximum limits of—				Color requirements [1]	Minimum milling requirements [2]
	Seeds, heat-damaged, and paddy kernels (singly or combined)		Red rice and damaged kernels (singly or combined) (percent)	Chalky kernels [1, 3] (percent)		
	Total (Number in 500 grams)	Heat-damaged kernels and objectionable seeds (Number in 500 grams)				
U.S. No. 1	15	5	1.0	4.0	Shall be white or creamy.	Well milled.
U.S. No. 2	20	10	2.0	6.0	May be slightly gray.	Well milled.
U.S. No. 3	35	15	3.0	10.0	May be light gray	Reasonably well milled.
U.S. No. 4	50	25	5.0	15.0	May be gray or slightly rosy.	Reasonably well milled.
U.S. No. 5	75	40	10.0	20.0	May be dark gray or rosy.	Lightly milled.
U.S. Sample grade						

U.S. Sample grade shall be milled rice of this class which: (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5, inclusive; (b) contains more than 15.0 percent of moisture; (c) is musty or sour, or heating; (d) has any commercially objectionable foreign odor; (e) contains more than 0.1 percent of foreign material; (f) contains two or more live or dead weevils or other insects, insect webbing, or insect refuse; or (g) is otherwise of distinctly low quality.

[1] For the special grade Parboiled milled rice, see § 68.315(c).
[2] For the special grade Undermilled milled rice, see § 68.315(d).
[3] For the special grade Glutinous milled rice, see § 68.315(e).

10. Section 68.312 is revised to read as follows:

§ 68.312 Grades and grade requirements for the class Screenings Milled Rice. (See also § 68.315.)

Grade	Maximum limits of—			Color requirements [1]	Minimum milling requirements [2]
	Paddy kernels and seeds				
	Total (singly or combined) (number in 500 grams)	Objectionable seeds (number in 500 grams)	Chalky kernels [1] [3] (percent)		
U.S. No. 1 [4] [5]	30	20	5.0	Shall be white or creamy.	Well milled.
U.S. No. 2 [4] [5]	75	50	8.0	May be slightly gray.	Well milled.
U.S. No. 3 [4] [5]	125	90	12.0	May be light gray or slightly rosy.	Reasonably well milled.
U.S. No. 4 [4] [5]	175	140	20.0	May be gray or rosy.	Reasonably well milled.
U.S. No. 5	250	200	30.0	May be dark gray or very rosy.	Lightly milled.
U.S. Sample grade— U.S. Sample grade shall be milled rice of this class which: (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5, inclusive; (b) contains more than 15.0 percent of moisture; (c) is musty, or sour, or heating; (d) has any commercially objectionable foreign odor; (e) has a badly damaged or extremely red appearance; (f) contains more than 0.1 percent of foreign material; (g) contains two or more live or dead weevils or other insects, insect webbing, or insect refuse; or (h) is otherwise of distinctly low quality.					

[1] For the special grade Parboiled milled rice, see § 68.315(c).
[2] For the special grade Undermilled milled rice, see § 68.315(d).
[3] For the special grade Glutinous milled rice, see § 68.315(e).
[4] Grades U.S. No. 1 to U.S. No. 4, inclusive, shall contain not more than 3.0 percent of heat-damaged kernels, kernels damaged by heat and/or parboiled kernels in nonparboiled rice.
[5] Grades U.S. No. 1 to U.S. No. 4, inclusive, shall contain not more than 1.0 percent of material passing through a 30 sieve.

11. Section 68.315(e) is added to read as follows:

§ 68.315 Special grades and special grade requirements.

* * * * *

(e) *Glutinous milled rice.* Glutinous milled rice shall be special varieties of rice (Oryza sativa L. glutinosa) which contain more than 50 percent chalky kernels. For long grain, medium grain, and short grain milled rice, grade U.S. No. 1 shall contain not more than 1.0 percent of nonchalky kernels, grade U.S. No. 2 not more than 2.0 percent of nonchalky kernels, grade U.S. No. 3 not more than 4.0 percent of nonchalky kernels, grade U.S. No. 4 not more than 6.0 percent of nonchalky kernels, grade U.S. No. 5 not more than 10.0 percent of nonchalky kernels, and grade U.S. No. 6 not more than 15.0 percent of nonchalky kernels. For second head milled rice, grade U.S. No. 1 shall contain not more than 4.0 percent of nonchalky kernels, grade U.S. No. 2 not more than 6.0 percent of nonchalky kernels, grade U.S. No. 3 not more than 10.0 percent of nonchalky kernels, grade U.S. No. 4 not more than 15.0 percent of nonchalky kernels, and grade U.S. No. 5 not more than 20.0 percent of nonchalky kernels. For screenings milled rice, there are no grade limits for percent of nonchalky kernels. For brewers milled rice, the special grade "Glutinous milled rice" is not applicable.

Note: The maximum limits for "Chalky kernels," shown in §§ 68.310, 68.311, and 68.312 are not applicable to the special grade "Glutinous milled rice."

12. Section 68.316 is revised to read as follows:

§ 68.316 Special grade designation.

The grade designation for coated, granulated brewers, parboiled, undermilled, or glutinous milled rice shall include, following the class, the word(s) "Coated," "Granulated," "Parboiled Light," "Parboiled," "Parboiled Dark," "Undermilled," or "Glutinous," as warranted, and all other information prescribed in § 68.314.

Dated: October 2, 1991.

John C. Foltz,

Administrator.

[FR Doc. 91-26147 Filed 10-30-91; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-91-420IR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Temporarily Change Grade, Size, and Container Marking Requirements for Texas Oranges and Grapefruit—M.O. 906

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule temporarily relaxes minimum grade and size requirements and suspends container marking requirements for oranges and grapefruit grown in Texas through February 15, 1992, the projected conclusion of the shipping period for this season. This action was unanimously recommended by the Texas Valley Citrus Committee (Committee). This rule is expected to help the Texas citrus industry successfully market the 1991–92 orange and grapefruit crops.

DATES: This rule becomes effective October 24, 1991. Comments which are received by December 2, 1991, will be considered prior to finalizing this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–475–3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 906, both as amended [7 CFR part 906], regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 10 handlers subject to regulation under the marketing order for oranges and grapefruit grown in Texas, and about 2,000 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Minimum grade and size requirements for fresh shipments of oranges and grapefruit grown in Texas are currently in effect under § 906.365 [7 CFR 906.365]. For Texas oranges the minimum grade requirement is U.S. No. 2 and the minimum size is pack size 288, except that the minimum diameter is 2$^{9}/_{16}$. For Texas grapefruit the minimum grade is U.S. No. 2 and the minimum size is pack size 96, except that the minimum diameter is 3$^{9}/_{16}$ inches. However, grapefruit which are at least 3$^{5}/_{16}$ inches in diameter may be shipped, except during the period November 16 through January 31 each season, if they grade at least U.S. No. 1.

The interim final rule temporarily relaxes the minimum grade requirement of U.S. No. 2 for Texas oranges permitting fruit to be shipped with very serious damage due to thorn scratches and scale not exceeding the acceptance numbers specified in § 51.689, and permitting any amount of green spots, oil spots, and discoloration.

The interim final rule also temporarily relaxes the minimum grade requirement of U.S. No. 2 for Texas grapefruit permitting shipment of misshapen fruit and fruit very seriously damaged by thorn scratches and scale which does not exceed the acceptance numbers in § 51.628 for very serious damage, and permitting any amount of green spots. In addition, the rule temporarily lowers the current minimum size requirement for all Texas grapefruit to 3$^{5}/_{16}$ inches in diameter from 3$^{9}/_{16}$ inches in diameter.

The interim final rule also amends § 906.430(a)(3) to temporarily suspend the requirement that certain containers of Texas oranges and grapefruit be marked U.S. No. 2, as provided in § 906.340 [7 CFR 906.340]. The suspension is necessary because the grade relaxation would permit a grade lower than U.S. No. 2 to be shipped.

The Committee reports that the 1991–92 season Texas orange and grapefruit crops are expected to be much smaller than normal, and that the fruit has more skin blemishes than normal. The grade and size relaxations are intended to permit as much fruit to be shipped to the fresh market this season as crop conditions will allow, while providing consumers with an acceptable product. This is expected to help the Texas citrus industry successfully market this season's citrus crops and have a positive effect on producer returns. The Texas citrus industry expects that less than 400,000 cartons of fruit will be shipped commercially this season, the first appreciable shipments since the severe freeze in 1989.

The Committee meets prior to and during each season to review the handling requirements for Texas oranges and grapefruit, which are in effect on a continuous basis. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information to determine whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

A companion rulemaking action, also published in this issue of the **Federal Register**, will temporarily suspend the grade requirements for imported oranges at the same time as the grade requirement changes are made for Texas oranges.

Texas orange and grapefruit shipments to fresh markets in the United States, Canada, and Mexico are subject to handling requirements effective under this marketing order. Exempt from such handling requirements are shipments made: (1) Within the production area (Cameron, Hidalgo, and Willacy counties in Texas); (2) in individually addressed gift packages aggregating not more than 500 pounds which are not for resale; (3) under the 400 pound minimum quantity exemption provision; and (4) for relief, charity, and home use. In addition, fruit shipped to approved processors for processing may be exempted from the handling requirements.

This action reflects the Committee's and the Department's appraisal of the need to issue the relaxed requirements. The Department believes that this action will have a beneficial impact on producers and handlers because it will permit 1991–92 orange and grapefruit shipments consistent with anticipated crop and market conditions. The application of handling requirements to Texas oranges and grapefruit over the years has been beneficial to the Texas citrus industry in marketing its crops.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the Committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes handling requirements for Texas citrus; (2) Texas citrus handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and they need no additional time to comply with the relaxed requirements; (3) shipment of the 1991–92 season Texas citrus crop is expected to begin on or before mid-October, and these changes should be in effect when shipments begin to be of maximum benefit to the industry; and (4) the rule provides a 30-day comment

period, and any comments received will be considered prior to the issuance of a final rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 906.365 is amended by revising paragraph (c) to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 906.365 Texas Orange and Grapefruit Regulation 34.

* * * * *

(c) Notwithstanding the requirements specified for oranges and grapefruit in paragraphs (a)(1) through (a)(4) of this section, any handler may ship through February 15, 1992:

(1) Oranges if they grade at least U.S. No. 2, except that very serious damage not to exceed the acceptance numbers specified in § 51.689 shall be permitted for thorn scratches and scale; and any amount of green spots, oil spots, and discoloration shall be permitted.

(2) Grapefruit if they grade at least U.S. No. 2, except that misshapen fruit and fruit very seriously damaged by thorn scratches and scale shall not exceed the acceptance numbers specified in § 51.628 for very serious damage; and any amount of green spots shall be permitted.

(3) Grapefruit if they are at least pack size 112, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be 3$^{5}/_{16}$ inches in diameter.

3. In section 906.340, paragraph (a)(3) is amended by adding at the end a new sentence to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 906.340 Container, pack, and container marking regulations.

(a) * * *

(3) * * * The requirements of this paragraph (a)(3) will not be effective until February 16, 1992.

Dated: October 24, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–26138 Filed 10–30–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 944

[Docket No. FV–91–423IR]

Fruits; Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the current orange import regulation to temporarily suspend current grade requirements for oranges imported into the United States. It also modernizes the provisions of the import regulation and specifies the minimum size requirements currently adopted by reference in that regulation. The import requirements are designed to assure that fresh imported oranges meet certain minimum standards of quality.

EFFECTIVE DATE: October 24, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under section 8e [7 U.S.C. 608e–1] of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non–major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, this action should also have small entity orientation, and impact on both small and large business entities in a manner comparable to rules issued under such marketing orders. There are about 20 importers of oranges. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $3,500,000. A majority of these importers may be classified as small entities.

Section 944.312 [7 CFR 944.312] currently specifies that oranges imported into the United States must meet the same minimum grade and size requirements as for those grown in Texas specified in § 906.365 [7 CFR 906.365]. Texas oranges are currently required to grade at least U.S. No. 2 and to be at least 2–$^{5}/_{16}$ inches in diameter. The Texas Valley Citrus Committee (Committee) has recommended that the grade requirements for Texas oranges be relaxed for 1991–92 season shipments, expected to begin by mid-October. The changes for Texas oranges are contained in a separate rule amending § 906.365.

Section 8e of the Act provides that whenever specified commodities, including oranges, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. In past years, the revised grade requirements being made effective for Texas oranges would have automatically been applied to imported oranges as provided in § 944.312. However, a provision in the Food, Agriculture, Conservation, and Trade Act of 1990 [Pub. L. 101–624—Nov. 28, 1990, sec. 1308] amended section 8e to require the Secretary of Agriculture to notify the United States Trade Representative (USTR) prior to implementing or modifying import regulations to ensure that they are consistent with trade agreements in effect. The USTR is required to provide advice to the Secretary within 60 days. Suspension of the current orange grade import requirements in § 944.312 is necessary since there is not enough time for the USTR's office to complete its review by mid-October, when the grade relaxations for Texas oranges need to become effective. Thus, it is necessary to temporarily suspend the orange

import grade requirements at the same time as the regulatory changes for Texas oranges are made.

The minimum size requirement in § 944.312, which states that imported oranges must meet the same minimum size requirement (2-$^{9}/_{16}$ inches in diameter) as is in effect for Texas oranges under § 906.365, remains unchanged substantively by this action. However, this interim final rule specifies the minimum size in the provisions of § 944.312. The rule also modernizes the section and removes obsolete language found in that section in current paragraph (g). These actions are non-substantive in nature and are being taken to make the regulation easier to read and understand by persons affected by the regulatory requirements.

This interim final rule reflects the Department's appraisal of the need to suspend the orange import grade requirements, as hereinafter set forth, and is in accordance with the Act.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented and other available information, it is found that this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action temporarily suspends grade requirements currently in effect for imported oranges; (2) the suspension of the orange import regulation must be made effective at the same time as the changes in the Texas orange regulation are made effective, which are needed by mid-October of this year; (3) the other changes made herein are non-substantive in nature; and (4) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 944.312 is revised to read as follows:

§ 944.312 Orange import regulation.

(a) Pursuant to section 8e [7 U.S.C. 608e–1] of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], and part 944—Fruits; Import Regulations, the importation into the United States of any oranges is prohibited unless such oranges meet the following requirements:

(1) Such oranges grade at least U.S. No. 2: *Provided*, That such requirement is hereby temporarily suspended beginning October 31, 1991.

(2) Such oranges are at least 2-$^{9}/_{16}$ inches in diameter.

(b) Terms and tolerances pertaining to grade and size requirements, which are defined in the United States Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona) [7 CFR 51.680–714], shall be applicable herein.

(c) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of oranges imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of oranges, is required on all such imports. The inspection and certification services will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards of Fresh Fruits, Vegetables, and Other Products [7 CFR part 51], and in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification [7 CFR 944.400].

(d) The term "importation" means release from custody of the United States Customs Service.

(e) Any person may import up to ten 7/10 bushel cartons, or equivalent quantity, of oranges exempt from the requirements specified in this section.

(f) Any oranges which fail to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such oranges borne by the importer.

(g) The Secretary has determined that oranges imported into the United States are in most direct competition with oranges grown in Texas regulated under Marketing Order No. 906.

Dated: October 24, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–26144 Filed 10–30–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 947

[Docket No. FV–91–401]

Potatoes Grown in Oregon-California; Interim Final Rule to Revise Pack and Safeguard Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule revises the pack requirements established for potatoes packed in 50-pound cartons to conform to recent changes in the U.S. Standards for Grades of Potatoes (Standards) and eliminates reporting requirements for potatoes shipped between districts within the production area for grading or storage. These changes will promote consistency in potato packing practices and should reduce handling costs.

DATES: This rule is effective October 31, 1991; comments received by December 2, 1991, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 447–2020.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement

No. 113 and Order No. 947, both as amended [7 CFR part 947], regulating the handling of potatoes grown in Oregon and California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Oregon-California potatoes subject to regulation under the marketing order and approximately 470 producers in the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the Oregon-California potato producers and handlers may be classified as small entities.

The handling requirements for fresh Oregon-California potatoes are specified in 7 CFR 947.340 [50 FR 2996, February 3, 1988, as amended at 53 FR 49114, December 6, 1988, and 54 FR 46718, November 7, 1989]. Current requirements include a minimum grade of U.S. No. 1 for potatoes packed in 50-pound cartons and U.S. No. 2 for potatoes in other containers. Potatoes shipped to points within the continental United States are required to be at least 2 inches in diameter or 4 ounces in weight, and potatoes shipped to export destinations must be at least 1⅝ inches in diameter. Red-skinned potatoes may be shipped without regard to a minimum size requirement, if they otherwise grade at least U.S. No. 1. Non-red-skinned potatoes that are 1⅝ inches or less in diameter may be shipped if they grade at least U.S. No. 1, and are packed in containers of at least 50 pounds. Also included in the handling regulation are safeguard procedures for potatoes shipped to authorized exempt outlets, which are not required to meet the established quality and size requirements.

At a meeting held on June 13, 1991, the Oregon-California Potato Committee (committee), the agency responsible for local administration of the marketing order, unanimously recommended changes in the existing pack and safeguard requirements.

Currently, potatoes packed in 50-pound cartons are required to grade at least U.S. No. 1, except that an additional tolerance is provided for hollow heart and internal discoloration.

Effective March 27, 1991, the United States Standards for Grades of Potatoes (7 CFR 51.1540–51.1566; 56 FR 7553, February 25, 1991) were revised to change the method for scoring hollow heart and internal discoloration. The Standards were revised to provide that hollow heart and certain other internal defects be scored based on specific diameter measurements rather than a method which scored these defects if they affected the appearance of the potato. For example, a potato was previously defined as damaged from hollow heart if the defect materially detracted from the internal appearance of the potato. Now hollow heart damage exists if the area affected is equal to or less than that of a circle ½ inch in diameter on a 6 ounce potato, with correspondingly greater or lesser amounts permitted on larger or smaller potatoes.

Under the previous Standards, photographs were used by inspectors as a guide to determine the extent of damage due to hollow heart and hollow heart discoloration. The marketing order regulation referenced these photographs. However, pursuant to the March 27, 1991, revision to the Standards, hollow heart and/or discoloration are scored based upon diameter. The committee therefore recommended deleting references to these photographs in the regulations. Although the method of scoring these defects will change, the tolerance permitted under the handling regulation will remain the same.

The committee believes that revising the method of scoring hollow heart and discoloration permitted under the handling regulation to conform to the revised Standards will promote more uniform trading practices in the potato industry and improve the consistency of inspection. Therefore, to assure that Oregon-California potatoes are packed and sold on the same basis as potatoes produced in other producing areas, it is necessary to amend the Oregon-California potato handling regulation accordingly.

The committee also unanimously recommended revising the safeguard requirements that apply to potatoes shipped to certain outlets free from grade, size, and inspection requirements. Currently handlers who wish to ship their potatoes to other districts within the production area for grading or storage need to apply for a Certificate of Privilege and report all such shipments on Special Purpose Shipment Report forms.

These safeguard requirements do not apply to shipments of potatoes between Districts 2 and 4. District 2 consists of four counties in southern Oregon, and District 4 is comprised of the two northern California counties included in the production area. Historically, movement of potatoes between these two adjacent districts for grading and storage has been common, while such movement between other districts has been limited. Recently, however, there has been increasing handler interest in packing potatoes grown in a district other than that in which the handler is located. Packing potatoes grown in other districts provides handlers with more flexibility in terms of varieties available and the timing of supplies.

The committee reports that allowing shipments between Districts 2 and 4 without regard to the safeguard requirements has been successful, in that shipments of ungraded or substandard potatoes have not been diverted to fresh market channels. Additionally, similar marketing order programs (e.g., that covering potatoes grown in the State of Washington) have operated effectively without regulating the movement of potatoes within the production area for purposes of grading or storage. The committee has therefore concluded that eliminating these safeguard provisions would not adversely affect program operations. Eliminating these requirements should reduce handling costs by eliminating unnecessary reporting requirements.

A conforming change is being made in § 947.132 "Reports" to eliminate reporting requirements pertaining to shipments for grading or storage.

The committee believes this action to eliminate safeguard requirements will result in reduced handler costs and more equitable treatment of handlers throughout the production area. It will also eliminate reporting requirements that are no longer necessary, while maintaining the quality of potatoes shipped to fresh market outlets.

In compliance with the Paperwork Reduction Act of 1980 [44 U.S.C. chapter 35], the information collection requirements contained in this interim final rule were approved by the Office of Management and Budget (OMB), and have been assigned OMB No. 0581–0112.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Shipments of 1991 crop potatoes from the production area have begun; (2) potato shippers are aware of this action which was unanimously recommended by the committee at a public meeting; (3) there is no special preparation required of affected handlers; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIF., AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 947.132 [Amended]

2. In § 947.132, paragraph (d) is removed.

3. Section 947.340 is amended by revising paragraphs (e), (g)(4), and (h)(2) to read as follows:

§ 947.340 Handling regulation.

* * * * *

(e) *Pack.* Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better, except that potatoes that fail to meet the U.S. No. 1 grade only because of hollow heart and/or internal discoloration may be shipped provided the lot contains not more than 10 percent damage by hollow heart and/or internal discoloration, or not more than 5 percent serious damage by internal defects.

* * * * *

(g) * * *

(4) Between districts within the production area for grading or storing. In addition, potatoes grown in District No. 5 may be shipped for grading and storing to points in the counties of Adams, Benton, Franklin and Walla Walla in the State of Washington, or to Malheur County, Oregon, without regard to the safeguard provisions of paragraph (h) of this section.

* * * * *

(h) * * *

(2) Each handler making shipments of potatoes pursuant to paragraphs (g)(2) and (g)(5) of this section shall obtain a Certificate of Privilege from the committee, and shall report shipments on Special Purpose Shipment Report forms at such intervals as the committee may prescribe in its administrative rules.

* * * * *

Dated: October 25, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–26141 Filed 10–30–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 971

[Docket No. FV–91–424]

Suspension of Container, Pack, Packing Holiday, Inspection and Certain Reporting Requirements Under Marketing Order No. 971 for Lettuce Grown in Lower Rio Grande Valley in South Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule suspends for the 1991–92 season the container, pack, packing holiday, inspection and certain reporting requirements currently in effect under Federal Marketing Order No. 971, regulating the handling of lettuce grown in South Texas. It has been determined that these regulations are not necessary during the upcoming season because it is anticipated that there will be only one person producing and handling South Texas lettuce.

DATES: The interim final rule is effective October 31, 1991, through October 31, 1992; comments which are received by December 2, 1991, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC, 20090–6456, telephone (202) 447–2020.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 144 and Marketing Order No. 971 [7 CFR part 971], regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than

$500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Last season, there were 11 handlers and 20 producers of South Texas lettuce, and the majority could be classified as small entities. It is anticipated that there will be only one entity producing and marketing lettuce in the production area during the 1991–92 season.

The South Texas Lettuce Committee (committee), the agency responsible for local administration of the order, met on May 29, 1991, and unanimously recommended that the handling regulations currently in effect under the marketing order be suspended for the 1991–92 lettuce season. These regulations, in effect from November 15 each year through the following March 31, specify the dimensions of the containers that may be used in shipping lettuce and the number of heads of lettuce that may be packed per container. Lettuce is required to be inspected, and no person may package lettuce on any Sunday or on Christmas Day. Certain reporting requirements are necessary for handlers who ship lettuce for relief, charity and experimental purposes.

The committee's recommendation to suspend these handling requirements for the upcoming season was based largely on the fact that there is only one entity expected to produce and handle lettuce this year. The regulations have therefore been deemed to be unnecessary.

Marketing Order No. 971 has been in effect since 1960. The order includes authority to specify the grade, size, quality, and quantity of lettuce which may be shipped during any period, as well as packing holiday, pack, container, inspection and reporting requirements. Briefly used, the quantity restrictions were found to be impractical. Quality requirements were imposed until 1971, but such requirements were frequently found to be difficult to meet because of the variable weather in the production area. Since 1971, only packing holiday, pack, container, and inspection authorities have been used.

The order was initially implemented to provide the industry with a means of dealing with volatility in South Texas lettuce prices due to fluctuations in the quality and quantity of lettuce marketed. Each year, the amount of lettuce acreage planted reflected prices received in the preceding season, so that high season-average prices resulted in increased plantings the following season. The marketing order, with its quality and volume control provisions, was looked upon as mechanism to help producers and handlers manage supply and to maintain industry trade acceptance by improving quality.

Since the order became effective, South Texas lettuce production has declined. While shipment levels and the number of producers and handlers have fluctuated, there has been a downward trend in all three. During the first year the South Texas lettuce marketing order was in effect, there were 31 handlers and 68 producers who produced 1,793,500 cartons of lettuce from 6,842 acres. During the 1990–91 marketing season, there were 11 handlers and 20 producers who produced 90,427 cartons of lettuce from 2,625 acres. It is expected that there will only be one lettuce producer and handler in the upcoming season. In addition, market share for South Texas lettuce has declined when compared to other lettuce producing areas, mainly California and Arizona.

Section 971.52(d) of the marketing order provides that regulations issued under the order may be suspended whenever such action is warranted upon recommendation of the committee or other available information. In view of the above information, particularly the fact that there will only be a single lettuce producer and handler, it has been determined that the pack, packing holiday, container and inspection requirements established for South Texas lettuce are not necessary during the 1991–92 season.

In compliance with the Paperwork Reduction Act of 1980 [44 U.S.C. chapter 35], the information collection requirements under the marketing order and the applicable handling regulation have been approved by the Office of Management and Budget. The handling regulation, under special purpose shipments, providers that handlers shipping lettuce for relief, charity and experimental purposes are exempt from assessment, container, pack, and inspection requirements if such handler presents a certificate of privilege. Each handler of lettuce shipping under a certificate of privilege must supply the committee with reports, as requested by the committee, showing the name and address of the shipper; car or truck identification; loading point, destination, or any other information deemed necessary by the committee. Since this interim rule suspends container, pack and inspection requirements currently in effect for shipments of south Texas lettuce for the 1991–92 season, it has been determined that the reporting requirements under the handling regulation applicable to special purpose shipments are also not necessary during the 1991–92 season.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** for the following reasons: (1) The marketing season for South Texas lettuce begins in November and to be of maximum benefit in preparation for the season this rule should become effective for some period prior to that time; (2) this rule relieves handling requirements deemed not to be necessary for the 1991–92 season, and postponing the effective date would serve no useful purpose; (3) this action was recommended at a public meeting and those who would be affected had the opportunity to participate at that meeting; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to the finalization of this rule.

List of Subjects in 7 CFR Part 971

Lettuce, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 971 is amended as follows:

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

1. The authority citation for 7 CFR part 971 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§§ 971.120, 971.121, 971.122, 971.124 and 971.322 [Suspended]

2. During the period October 31, 1991, through October 31, 1992, §§ 971.120, 971.121, 971.122, 971.124 and 971.322 are suspended.

Dated: October 25, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-26139 Filed 10-30-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 997

[Docket No. FV-91-297FR]

Changes in Provisions Regulating the Quality of Domestically Produced Peanuts Not Subject to the Peanut Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends 7 CFR part 997 which contains provisions regulating the quality of domestically produced peanuts not subject to the Peanut Marketing Agreement (7 CFR part 998). This action will change the regulations to recognize that blanching can only be used successfully in reconditioning peanuts failing to meet certain grade requirements, and to limit inspection of blanched peanuts to the same grade factors inspected under the Peanut Marketing Agreement (Agreement). This action will also make necessary revisions to clarify the regulations pertaining to ownership of peanuts which are moved for custom remilling or blanching, change the regulations to allow for more efficient utilization of peanut meal, make minor revisions in the disposition requirements for peanuts which fail to meet the requirements for human consumption and correct minor typographical errors in the regulations. These changes are intended to bring the inspection, quality and disposition requirements under part 997 into conformity with those under the Agreement as required by the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: October 31, 1991.

FOR FURTHER INFORMATION CONTACT: Patrick A. Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2530-S, Washington, DC 20090-6456, telephone: 202-475-3862.

SUPPLEMENTARY INFORMATION:

This final rule is issued pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U S.C. 601-674), and as further amended December 12, 1989, Public Law 101-220, Section 4(1), (2), 103 Stat. 1878, hereinafter referred to as the "Act".

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 80 handlers of peanuts who have not signed the Agreement and thus, will be subject to the regulations contained herein. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000. It is estimated that most of the handlers are small entities. Most producers doing business with these handlers are also small entities. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $500,000.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. These areas encompass 16 states. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1990 totalled 3.60 billion pounds, a 10 percent decrease from 1989 and 1988. The 1990 crop value is $1.26 billion, up 13 percent from 1989. The 1991 crop is estimated at 5.10 billion pounds.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. The Agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965. Approximately 95 percent of 1988 crop peanuts were marketed by handlers signatory to the Agreement.

Requirements established pursuant to the Agreement require farmers' stock peanuts with visible *Aspergillus Flavus* mold (the principal producer of aflatoxin) to be diverted to non-edible uses. Each lot of shelled peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Peanut Administrative Committee (Committee) established under the Agreement. The Committee works with the Department in administering the marketing agreement program. The inspection and chemical analysis programs are administered by the Department.

Public Law 101-220, enacted December 12, 1989, amended section 608(b) of the Act to require all peanuts handled by persons who have not entered into the Agreement (non-signers) to be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. Under the amendment, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. Regulations to implement Public Law 101-220 were issued and made effective on December 4, 1990. Violation of the requirements promulgated pursuant to Public Law 101-220 may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts, as determined under section 108b of the Agricultural Act of 1949 (7 U.S.C. 1445C-2), for the marketing year for the crop with respect to which such violation occurs. The intent of Public Law 101-220 and the objective of the Agreement is to insure the only wholesome peanuts of good quality enter edible market channels.

Currently, paragraph (a)(2) of § 997.40 *Reconditioning and disposition of peanuts failing quality requirements* provides that handlers may blanch or cause to have blanched positive lot identified shelled peanuts (which originated from Segregation I peanuts as defined in § 997.5(b)) that fail to meet the requirements for human consumption specified in § 997.30(a). This includes peanuts failing to meet those requirements because of excess damage, minor defects, moisture, foreign material, fall through (sound split and broken kernels and whole kernels passing through specified sized screens), or which are positive as to aflatoxin. However, blanching is not a suitable process for reconditioning peanuts which fail to meet those requirements because of excess fall through. During the blanching process the red skins are removed from the peanuts and the moisture of the peanuts is reduced. The

loss of skins and moisture tends to reduce the size of the peanuts. Hence, peanuts failing to meet the fall through requirements initially would continue to fail to meet those requirements after blanching, and peanuts initially meeting the fall through requirements would likely fail to meet those requirements after blanching because of the change in size. In recognition of this and to bring the requirements into conformity with those in effect under the Agreement, this action modifies paragraph (a)(2) of § 997.40 to specify that only peanuts that fail to meet the requirements specified in § 997.30(a) because of excess damage, minor defects, moisture, or foreign material, or are positive as to aflatoxin may be blanched to attempt to cause the peanuts to meet the minimum requirements specified in paragraph (a). In addition, paragraph (a)(2) of § 997.40 is modified to specify that, after blanching, such peanuts must meet only the specification for unshelled peanuts, damaged kernels, minor defects, moisture and foreign material as listed in paragraph (a)(1) of § 997.30 and be accompanied by a negative aflatoxin certificate to be eligible for disposition into human consumption outlets.

Paragraph (b)(3) of § 997.40 requires meal produced from the crushing of "restricted" categories of peanuts to be disposed of for use as fertilizer or other non-feed uses. On January 23–24, 1991, the Committee unanimously recommended changes in the regulations under the Agreement requiring the meal produced from the crushing of all "restricted" categories of peanuts be sampled and tested for aflatoxin, and that the numeric test results be shown on the certificate accompanying each shipment of meal produced from the crushing of "restricted" categories of peanuts. The Committee also recommended that restrictions be removed from the regulations applicable to the use and disposition of meal produced from the crushing of "restricted" peanuts. Meal produced from the crushing of "unrestricted" categories of peanuts continues to be exempt from aflatoxin testing requirements and eligible for feed use without testing. These requirements were published in the **Federal Register** on August 8, 1991 (56 FR 37645). Accordingly, this final rule will implement similar changes in § 997.40 of the regulations applicable to handlers who are not signatory to the Agreement. In addition to requiring meal produced from the crushing of restricted categories of peanuts to be tested, the change requires such meal to be prepared for disposition in specifically identified lots not exceeding 200,000 pounds to protect the reliability of the sampling and testing procedures.

Generally, restricted categories of peanuts are peanuts which were determined to be Segregation III or peanuts which contain or are likely to contain significant levels of aflatoxin. Unrestricted categories of peanuts are peanuts which have been determined to be Segregation I or II pursuant to § 997.20 or have been determined to be negative (based on the criteria applicable to non-edible quality categories) as to aflatoxin content.

Currently, other Federal and State requirements or criteria for the disposition of peanut meal in certain feed outlets are less restrictive than those in effect under part 997. Therefore, the regulations restrict dispositions of peanut meal for feed use that would be authorized under other State or Federal requirements or criteria. These changes will provide crushers and meal receivers with certified information as to the aflatoxin content of meal produced from restricted categories of peanuts. Receivers will then make usage determinations based upon Federal or State requirements or criteria in effect for the desired outlet. This will allow for more efficient utilization of peanut meal, eliminate differences between the regulations under part 997 and other State or Federal requirements or criteria, and simplify the requirements in effect for the disposition of peanut meal.

Section 997.40 includes provisions which regulate the disposition of peanuts which fail to meet the requirements for human consumption. Paragraph (b)(1)(iv) states that certain peanuts may be disposed of to wildlife feed or rodent bait use. This final rule deletes paragraph (b)(1)(iv), and revises paragraph (b) to specify that only fall through (a specific category of non-edible quality peanuts) which has been tested and determined negative as to aflatoxin may be used for such purposes. This change is necessary to make the disposition requirements consistent with those in place under the Agreement. The Department is also revising and redesignating paragraph (b)(4)(ii) as paragraph (b)(4)(iii), adding a new paragraph (b)(4)(ii), and revising paragraph (b)(5).

This final rule also revises the second sentence of § 997.40 (a)(3), which requires the title to peanuts moved for remilling or blanching to be retained by the original handler until such peanuts have been remilled or blanched and certified as meeting the requirements for human consumption, to specify that that sentence applies only to peanuts moved for custom remilling or blanching under paragraphs (a)(1) and (a)(2) and not to peanuts which are sold to another handler for further handling. Currently, the regulations require handlers to retain title to peanuts which they are allowed to sell to other handlers for further handling. This action will correct the ambiguity in paragraph (a).

Finally, this action will correct minor typographical errors in the last sentence of § 997.30(c)(2), the first sentence of § 997.40(a)(1), and the first sentence of § 997.52.

Based on the above, the Administrator of the AMS has determined that the changes will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the sections of the regulations that will be amended have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0163.

Notice of these changes was published in the **Federal Register** on August 14, 1991 [56 FR 40269]. Interested persons were invited to submit written comments through August 29, 1991. No comments were received.

After consideration of all available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the 1991 crop year began July 1 and therefore this action should be implemented as soon as possible.

List of Subjects in 7 CFR Part 997

Peanuts, Quality regulations, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is amended as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674; sec. 4, 103 Stat. 1878, 7 U.S.C. 608b.

2. Section 997.30 is amended by revising the last sentence of paragraph (c)(2) to read as follows:

§ 997.30 Outgoing regulation.

* * * * *

(c) * * *

(2) * * * A copy of such notice covering each lot shall be sent to the Division.

* * * * *

3. Section 997.40 is amended by revising the first sentence of paragraph (a)(1), revising paragraph (a)(2), revising the second sentence of paragraph (a)(3), and revising paragraph (b) to read as follows:

§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.

(a) * * *

(1) Handlers may remill peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of § 997.30(a) or move positive lot identified shelled peanuts that fail to meet such requirements to a custom remiller or sell such peanuts to another handler, or a handler as defined in 7 CFR 998.8, for remilling or further handling. * * *

(2) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for human consumption specified in § 997.30(a) because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet the specifications for unshelled peanuts, damaged kernels, minor defects, moisture and foreign material as listed in § 997.30(a) and be accompanied by a negative aflatoxin certificate. If such peanuts do not meet the requirements of § 997.30(a) they shall be disposed of and such disposition reported as provided in paragraph (b) of this section.

(3) * * * The title of peanuts moved for custom remilling or blanching shall be retained by the handler until the peanuts have been remilled or blanched and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in § 997.30(a).

* * * * *

(b) *Disposition of shelled peanuts failing quality requirements for human consumption.*

(1) Handlers may dispose of positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) which fail to meet the requirements for human consumption specified in § 997.30(a) and positive identified lots of loose shelled kernels, fall through and pickouts which have been certified "negative" as to aflatoxin content as unrestricted:

(i) To domestic crushing or to other handlers, or a handler as defined in 7 CFR 998.8, for crushing or fragmenting and exportation (such disposition shall be reported on Form FV–117–5 "Handlers Report of Dispositions of Non-Edible Quality Shelled Peanuts to Crusher or Fragmenter or Dyeing Processor");

(ii) To export to countries other than Canada or Mexico, provided they meet fragmented requirements (such disposition shall be reported on Form FV–117–6 "Handler's Report of Export of Unrestricted Non-Edible Quality Fragmented Peanuts");

(iii) To domestic animal feed use as provided in paragraph (b)(2) of this section or to other handlers, or a handler as defined in 7 CFR 998.8, for such disposition. Fall through that has been sampled and determined negative as to aflatoxin content may be disposed of for use as wildlife feed or rodent bait use in containers labeled as such (such disposition shall be reported on Form FV–117–7 "Handlers Report of Disposition of Non-Edible Quality Peanuts for Wild-Life Feed or Rodent Bait").

(2) Shelled peanuts which fail to meet requirements for disposition to human consumption outlets may be disposed of for use as domestic animal feed: *Provided*, That each lot of peanuts so disposed of is:

(i) Treated with an appropriate coloring or dyeing solution with a minimum of 80 percent of the peanuts showing evidence of the dye or coloring agent;

(ii) Handled and shipped under positive lot identification procedures (except for bulk loads, red tags shall be used and such tags marked, "For Animal Feed—Not for Human Consumption");

(iii) Covered by a valid "negative" aflatoxin certificate; and

(iv) That the handler's bill of lading and invoice covering the shipment of each such lot include the following statement: "The peanuts covered by this bill of lading (or invoice) are for animal feed only and are not to be used for human consumption." Handlers shall report such disposition on Form FV–117–8 "Handler's Disposition Report of Dyed Non-Edible Quality Peanuts to Animal Feed Use (Unrestricted Peanuts Only)".

(3) Positive lot identified shelled peanuts failing to meet the quality requirements for human consumption specified in § 997.30(a) due to testing positive for aflatoxin pursuant to § 997.30(c) may be disposed of for "restricted" domestic crushing and reported on Form FV–117–5 "Handlers Report of Dispositions of Non-Edible Quality Shelled Peanuts to Crusher or Fragmenter or Dyeing Processor". Such peanuts may also be exported, as "restricted", to countries other than Canada or Mexico. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for "fragmented" peanuts. The "in-land" bill of lading and invoice covering the export of "restricted" peanuts must include the following statement: "The peanuts covered by this bill of lading (or invoice) are limited to crushing only and may contain aflatoxin. Exportation of such restricted peanuts shall be reported on Form FV–117–9 "Handler's Report of Export of Restricted Non-Edible Quality Fragmented Peanuts".

(4)(i) Handlers who have acquired Segregation 2 and 3 farmers' stock peanuts pursuant to § 997.20(f) may commingle such peanuts or keep them separate and apart. The Segregation 3 farmers' stock peanuts or commingled Segregation 2 and 3 farmers' stock peanuts may be disposed of to:

(A) Other handlers, or a handler as defined in 7 CFR 998.8, for shelling, fragmenting, or crushing, as "restricted"; or

(B) Crushers for crushing as "restricted". Handlers may shell such peanuts, and further disposition of the shelled peanuts shall be as provided in paragraph (b)(3) of this section.

(ii) Meal produced from the crushing of loose shelled kernels, fall through, and pickouts, which have not been certified negative as to aflatoxin content, and meal produced from the crushing of other "restricted" categories of peanuts shall be prepared for disposition in specifically identified lots not exceeding 200,000 pounds. Handlers or crushers, at their own expense, shall cause each such lot of meal to be sampled by an inspector of the Federal or Federal-State Inspection Service and tested for aflatoxin in a laboratory listed in § 997.30(c)(5)(i) of this part. The numerical test result of the chemical assay shall be shown on a certificate covering each lot of meal produced from "restricted" peanuts, and a copy of the certificate shall accompany each shipment or disposition. However, meal produced from the crushing of loose shelled kernels, fall through, and pickouts, which have been certified negative as to aflatoxin content, and meal produced from the crushing of

other categories of peanuts determined by this section to be eligible for "unrestricted" crushing, shall be exempt from aflatoxin testing requirements.

(iii) Handlers who have acquired Segregation 2 farmers' stock peanuts pursuant to § 997.20(f) and held them separate and apart from Segregation 3 peanuts may commingle the Segregation 2 farmers' stock with Segregation 1 farmers' stock for disposition to domestic crushing or export as inedibles. The Segregation 2 farmers' stock peanuts or commingled Segregation 1 and 2 farmers' stock peanuts may be disposed of to other handlers, or a handler as defined in 7 CFR 998.8, for shelling, fragmenting, or crushing or to crushers. Handlers may shell the Segregation 2 or commingled Segregation 1 and 2 peanuts and dispose of the shelled peanuts:

(A) To another handler, or a handler as defined in 7 CFR 998.8, for fragmenting or crushing;

(B) To export as "unrestricted"; or

(C) To domestic crushing as "unrestricted". The meal produced from such peanuts may be disposed of without restriction. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for fragmented peanuts.

(5) Unless otherwise specified, the disposition and reporting requirements applicable to peanuts failing quality requirements for human consumption specified in the preceding paragraph (b) of this section shall also apply to loose shelled kernels, fall through and pickouts.

* * * * *

4. Section 997.52 is amended by revising the first sentence to read as follows:

§ 997.52 Reports of acquisitions and shipments.

Each handler shall report acquisitions of Segregation 1 farmers' stock peanuts on Form FV–117–10 "Handlers Monthly Report of Acquisitions" and file such other reports of acquisitions and shipments of peanuts, as prescribed in this part. * * *

Dated: October 25, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–26142 Filed 10–30–91; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 40, 70, and 74

RIN 3150–AD56

Material Control and Accounting Requirements for Uranium Enrichment Facilities Producing Special Nuclear Material of Low Strategic Significance

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (Commission) is amending its regulations to include performance-based material control and accounting requirements that will apply to uranium enrichment facility licensees who produce significant quantities of special nuclear material (SNM) of low strategic significance. The requirements in this amendment are similar to existing requirements that apply to licensees authorized to possess and use more than one effective kilogram of special nuclear material (SNM) of low strategic significance. The final rule imposes requirements to ensure that enrichment facilities produce only enriched uranium of low strategic significance as authorized and will apply to all applicants who build or operate enrichment facilities.

EFFECTIVE DATE: December 2, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3803 or Mr. Donald R. Joy, Office of Nuclear Material Safety and Safeguards, U.S. Regulatory Commission, Washington, DC 20555, telephone (301) 492–0352.

SUPPLEMENTARY INFORMATION:

Background

The Commission published the proposed rule on this subject in the **Federal Register** on December 17, 1990 (55 FR 51726). The rule proposed to amend 10 CFR part 74 to provide material control and accounting (MC&A) requirements for uranium enrichment facilities producing enriched uranium for use in light water reactor nuclear power facilities. Conforming amendments were also proposed for 10 CFR parts 2, 40, and 70. A draft regulatory guide, DG–5002, "Material Control and Accounting for Uranium Enrichment Facilities Authorized to Produce Special Nuclear Material of Low Strategic Significance" to accompany the proposed rule, was made available during the comment period.

In the United States, current uranium enrichment operations are carried out exclusively by the Department of Energy (DOE). These operations have been and continue to be exempt by law from regulation by the NRC. Although licensed commercial enrichment is permitted by law, there has not been commercial interest in enrichment until recently. Hence the NRC currently has no regulations explicitly designed to regulate licensed enrichment.

The need for enrichment regulations is now emerging. On January 31, 1991, Louisiana Energy Services applied for a license to construct and operate an enrichment plant using gas centrifuge technology. In a separate action, DOE is proposing the construction and operation of an enrichment plant utilizing the atomic vapor laser isotope separation (AVLIS) process. Congress may require such a facility to be licensed by the NRC, although no requirements for NRC licensing exist at present. Both plants would be designed to produce low enriched uranium from natural uranium, where the term "natural uranium" refers to uranium that has not been artificially enriched in the U^{235} isotope.

Enactment of the Solar, Wind, Waste and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101–575) provides that the licensing of uranium enrichment plants will be through a single license issued pursuant to 10 CFR parts 40 and 70, rather than a two-part license under 10 CFR part 50. The Commission is proceeding, as a separate matter, to conform its regulations to the requirements of this Act and thereby define the regulatory framework for licensing enrichment plants.

At the present time the NRC cannot rule out the possibility that enrichment equipment could be deliberately misused to produce unauthorized enriched uranium. The unauthorized enriched uranium could be either an undeclared excess of enriched uranium at the licensed enrichment level or uranium enriched to a level higher than that authorized. Production of unauthorized enriched uranium would be inimical to the common defense and security of the United States and is prohibited by the Atomic Energy Act of 1954, as amended.

Safeguards are needed for such facilities to protect against such unauthorized activities. This final rule would address the need for such safeguards primarily through creation of a new § 74.33 in NRC's existing material control and accounting regulations. This

section contains general performance objectives and system requirements and capabilities which licensees would be required to address through development and implementation of a fundamental nuclear material control (FNMC) plan.

Public Comments and NRC Responses

The Commission received six comment letters from different sources in response to the proposed rulemaking. Two comments from potential licensees, one from an engineering and construction firm, one from a Federal agency, and two from individuals. The Environmental Protection Agency stated that the proposed rule had been reviewed, but did not suggest modifications or specifically indicate support for or opposition to the proposed rule. Four commenters did not specifically indicate support or opposition to the proposed rule, but did suggest modifications. One commenter supported the rule with modifications.

General categories of comments from public comment letters and the Commission's responses are presented below. One commenter also addressed items in the draft regulatory guide. Those comments will not be discussed here, but they were considered during the preparation of the final regulatory guide.

Comments on Scope of Rule

One commenter stated that the proposed regulations was vague and subject to multiple interpretation. One commenter stated that § 74.31(a) should be modified to exclude any facilities that are subject to § 74.33 from the MC&A requirements of § 74.31. One commenter urged that only the agreed upon antiproliferation measures be imposed on U.S. licensees. The Commission concludes that the commenter meant those measures agreed upon by the United States and the International Atomic Energy Agency (IAEA). Apparently the commenter believes that NRC efforts might be thwarted by lax enforcement of antiproliferation measures in other countries. One commenter wanted the rule modified to acknowledge that physical security measures may be used to achieve the MC&A objectives of § 74.33. One commenter wanted to allow the production of enriched uranium up to the quantities specified for each enrichment level in the definition of low strategic significance because in the commenter's view, the safeguards significance is the same for all enrichment levels of SNM of low strategic significance. One commenter who also wanted to change the proposed rule to permit production of low strategic significance material, argued that it is the illegal use and distribution of such material, not its production, that should be prevented.

One commenter argued that security measures at uranium enrichment facilities should be more stringent than that required at other types of facilities using uranium of this enrichment level because of the need to deter and detect high enriched uranium (HEU) production.

Response. The Commission disagrees with the first comment that the rule is unacceptably vague. Performance-based rules like the proposed rule are intentionally written to allow flexibility for how the applicants and licensees develop a program specific to their facility which meets the general performance objectives and stated system features and capabilities. Thus, the proposed rule by necessity was written in general rather than prescriptive terms. Prescriptive detail on acceptable ways to meet the objectives is provided in the accompanying regulatory guide.

The Commission agrees with the second comment, and § 74.31(a) has been revised to exclude specifically production facilities, licensed pursuant to part 70 of this chapter, from the requirements of § 74.31.

With regard to imposing requirements other than those agreed upon by the U.S. and the IAEA, the IAEA does not issue licenses, and this rule must reflect what the NRC considers acceptable and appropriate for licensing commercial uranium enrichment in the United States. However, the proposed rule was written with full consideration of IAEA agreements and licensees selected by the IAEA for their inspection may be subject to additional IAEA requirements under 10 CFR part 75.

While the Commission agrees with the thrust of the comment regarding physical security measures, it disagrees that specific acknowledgement of the use of such measures in achieving MC&A objectives is necessary. Physical security measures are a natural complement to MC&A programs. Under this rule, an applicant will be free to develop its MC&A program in any manner as long as it meets the general performance objectives and has the system features and capabilities specified. Physical security measures can be included if desired. Using locks or guards to prevent access to enrichment equipment is an example of a physical security measure which could be used to achieve, in part, the performance objectives relating to unauthorized production of enriched uranium.

With regard to the level of enrichment allowed, the commenter who argued that the safeguards significance of all levels of enrichment of uranium of low strategic significance is the same appears to have a good point. However, at an enrichment facility, the presence of even a small quantity of HEU has a greater safeguards significance because of the nature of the facility, and therefore requires more restrictive regulation. The Commission's view is that the present MC&A requirements are appropriate for uranium enrichment facilities producing less than 10 percent U^{235} enriched uranium. More stringent requirements would be needed for enrichment facilities producing uranium of higher enrichments. Moreover, it is consistent with both the Atomic Energy Act and the Commission's longstanding defense-in-depth policy that both unauthorized use and production of HEU should be prevented.

One of the main purposes of this rule is to prevent and detect with high assurance, the production of HEU. Therefore, the suggestion that physical security measures be imposed that are greater than those required by § 73.67(f) for other types of facilities using uranium of low strategic significance was not taken because such measures are not needed.

Specific Comments

(1) *Comment on 10 CFR 40.1.* Two commenters suggested changing the reference from § 70.22 to § 74.33 in 10 CFR 40.1 to clarify where individuals can find additional criteria for the issuances of a license.

Response. The Commission considered this recommendation. However, because § 70.22 contains all the requirements for a license application e.g., environmental impact statement, emergency plan, physical security plan, etc., whereas § 74.33 contains only the MC&A part of the regulatory program required for an uranium enrichment facility, the reference is not being changed.

(2) *Contents of Applications.* Two commenters wanted changes to § 70.22(b) to exclude persons possessing enrichment equipment from being required to have a license, arguing consistency with the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101–575).

Response. The Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 specifically requires the licensing of any equipment,

or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium by defining such as an enrichment facility. Hence to adopt the comment would be in conflict with the Act.

(3) *Condition of License.* One commenter argued that the proposed change to § 70.32(c)(1) would require any licensee having a specified quantity of source material to have a part 70 or 74 MC&A program. The commenter suggested that part 40 could be more appropriately amended to directly reference MC&A requirements for natural and depleted uranium at enrichment facilities to avoid this situation.

Response. It was not the Commission's intent that source material at other than an enrichment facility be subject to the MC&A requirements of part 70 or 74. Accordingly, § 70.32(c)(1) has been revised by adding the words "at an uranium enrichment facility" after the words "source material." However, for reasons stated previously (see response to comment 1) the Commission believes that part 70 and not part 40 is the proper place to provide the MC&A reference.

(4) *Definitions.* For clarity, one commenter wanted to modify the definition of *active inventory* and add new definitions for the terms *dynamic inventory* and *items.*

Response. The recommendations to modify the definition of *active inventory* and add a definition for *dynamic inventory* were not adopted. In the Commission's opinion, the suggested modification of the definition of *active inventory* would add an inappropriate level of detail to the existing definition. A definition of *dynamic inventory* is not necessary because the meaning of the term is clear in the context of its use. The commenter's suggested definition of *item* has been added to § 74.4.

(5) *Reports of Loss or Theft or Attempted Theft or Unauthorized Production of Special Nuclear Material.* In order to reduce the possibility that reporting requirements would be overlooked, one commenter wanted to eliminate § 74.11 and have all the reporting requirements consolidated in § 70.52 and proposed § 70.50. Another commenter wanted to include recovery from a centrifuge crash(s) in addition to the 24 hour start-up process exclusion so that a temporary existence of enrichments greater than that authorized during such recovery would not be a violation of the regulations.

Response. The first comment was not adopted. Reporting requirements applicable to a variety of SNM licensees are dispersed throughout part 74. The Commission does not see any benefit to removing reporting requirements from part 74 for one particular licensee. The second comment was not adopted for two reasons. First, because malfunctioning (crashed) centrifuge machines are normally shut down and isolated from production gas streams and left in place. Because of the configuration of the enrichment facilities, it is generally not practical to repair single centrifuge machines. Second, because the staff considers a period of adjustment following a centrifuge crash to be equivalent to a start-up process and either the adjustment or the start-up could be accomplished in 24 hours. For enrichment facilities employing laser isotope separation or gaseous diffusion technology an initial surge of HEU at start-up does not occur.

(6) *Need for New Section.* One commenter questioned the need for a new section instead of adding new requirements to existing § 74.31. Concern was also expressed about why the language in the proposed § 74.33 was not identical to the existing language of § 74.31.

Response. The new § 74.33 is a stand alone regulation applicable only to uranium enrichment facilities. Section 74.31 applies to fuel fabrication licensees. Each section has individual supporting guidance documents which described in detail the intent of the requirements contained in each section. Moreover, § 74.33 contains requirements unique to an enrichment facility, and therefore cannot be identical to § 74.31.

(7) *Performance Objectives.* One commenter was concerned that mass spectrometers could be used to produce gram quantities of HEU over a period of time and that they should be included in the regulation by allowing the production of enriched uranium to the quantities by enrichment level specified by low strategic significance. The commenter questioned how "accurate," "current," "reliable" knowledge must be and whether the terms apply equally to source material, SNM, product, tails, scrap, waste, in storage as items or in processing equipment. Also, the commenter wanted § 74.33(a)(1) to match the wording of § 74.31(a)(1) because the commenter believes they are objectives. The commenter wanted to delete the word "any" from § 74.33(c)(2) because the commenter wanted to allow production of enriched uranium greater than 10 percent provided the quantity limits for SNM of low strategic significance were not exceeded. Since during start-up of a centrifuge cascade a surge of uranium enriched to more than 10% is a normal occurrence, one commenter wanted to add to the end of 10 CFR 74.33 (a)(5) and (c)(5)(i) the following: "for centrifuge enrichment facilities this requirement does not apply to each cascade during its start-up process, not to exceed the first 24 hours.", so that no resolution would be required. On commenter was concerned about not retaining a performance objective similar to § 74.31(a)(3) which would "aid in the investigation and recovery of missing material" for consistency.

Response. The comment to allow production of HEU has not been adopted because mass spectrometers are not production equipment but analytical equipment. Also, even if one considered mass spectrometers to be production equipment, it would be extremely difficult to product one effective kilogram of SNM over any reasonable time period. (See response to comments on Scope of Rule.)

Concerning the second comment, performance objectives are broad statements of the principal parts of the required program. Guidance on how "accurate," "current," and "reliable" knowledge should be and to what extent the terms should apply to each material type is provided in the regulatory guide.

The objective in § 74.33(a)(1) has been rewritten to more closely parallel the wording of § 74.31(a)(1).

The word, "any" was deleted from § 74.33(a)(2) because it is not necessary but, the general intent remains the same, that is production is allowed only up to 10 percent U^{235}.

The fourth comment was accepted and the commenter's suggested words, "for centrifuge enrichment facilities this requirement does not apply to each cascade during its start-up process, not to exceed the first 24 hours," were added to § 74.33(a)(5). Further, § 74.33(c)(5) was modified to include the intent of the comment.

New performance objectives, to provide information to aid in the investigation of missing uranium and the unauthorized enrichment of uranium, have been added in § 74.33(a) (7), (8), and (9) in response to the last comment related to keeping the requirements in § 74.31(a)(3) for these facilities.

(8) *Implementation.* One commenter wanted to change the phrase "2 years prior to facility start up" in § 74.33(b)(1) because the start date of the 2 year period can not be known until the actual end date is known. The commenter suggested specifying a maximum time interval following the initial license application. The same commenter stated that the wording of § 74.33(b) was faulty

in that licensees could be in noncompliance if NRC did not approve the fundamental nuclear material control (FNMC) plan in a timely manner, and unclear as to whether the FNMC plan must be implemented prior to receipt of (1) 5,000 grams U^{235} in a single receipt, (2) cumulative receipts of 5,000 grams U^{235} within a material type, or (3) 5,000 grams U^{235} from all receipts. The commenter also provided a suggested rewrite of § 74.33(b). Another commenter stated that the two year period for submittal of an FNMC plan is too long and that a preliminary plan should be submitted within one year with the final plan two months before start-up because the commenter plans to build and partially operate an enrichment facility in two years and facility configuration would not be finalized at the start of construction. Another commenter wanted to add to the end of § 74.33(b)(2) the phrase, "whichever comes later" so that the MC&A program does not need to be implemented until after the receipt of more than 5,000 grams U^{235} because of long construction times.

Response. The staff reconsidered the timing of the submission of the FNMC Plan. The final rule now requires the FNMC Plan to be submitted as part of the application which is consistent with § 70.22(b). As for the last suggestion, § 74.33(b)(2) was modified so as to clarify the Commission's intent to have the FNMC plan implemented prior to either the receipt of 5,000 grams U^{235} or the issuance of a license to test or operate the enrichment facility, whichever occurs first.

(9) *System Features and Capabilities.* One commenter expressed concern because § 74.33(c)(1) did not have the same wording as § 74.31(c)(1). In the commenter's view, deletion of word "critical" suggests that the NRC is downgrading the importance of key procedures. Also, the commenter indicated that the use of "periodic review" instead of "adequate review" weakened the requirement. One commenter questioned the use of "accurately" in describing measured values in § 74.33(c)(2), because in performance-based regulations the licensee should be allowed on the bases of cost effectiveness to choose the individual measurement accuracy to comply with § 74.33(c)(3). In § 74.33(c)(3)(ii), one commenter wanted to add the phrase "U^{235} of the" before "active inventory" for clarity. One commenter wanted to reword § 74.33(c)(3)(iii) for clarity because the commenter was not sure of the meaning of the phrase "so the licensee can satisfy this requirement." One commenter stated that the lead-in clause of § 74.33(c)(4) is confusing in that the words "current and reliable knowledge" are also used in § 74.33(c)(6). One commenter appeared to be trying to help clarify inventory requirements for different types of materials by using the DOE material type codes. The commenter also suggested a parenthetical addition (i.e., "uranium in cascades"). One commenter suggested rewording § 74.33(c)(5)(i) to allow production of enriched uranium to quantities by enrichment level as specified by low strategic significance. One commenter wanted to rewrite § 74.33(c)(5)(ii) using the argument that it is the illegal use and distribution of such material, not its production that should be prevented. Three commenters wanted the wording of § 74.33(c)(6) to be identical to § 74.31(c)(6), which contained an exemption for solutions having less than 5 grams U^{235} per liter. One commenter wanted to include depleted uranium in the list of exempted items because of cost. One commenter wanted to rewrite § 74.33(c)(7) and change the term "statistically significant" to "standard error," claiming that standard error has a defined level of significance. One commenter wanted the U^{235} concentration of tails to be determined using by-difference accounting instead of measurements to save the cost of measuring the tails.

Response. The word "critical" was omitted from § 74.33(c)(1) to ensure that all MC&A procedures are written and periodically reviewed.

The periodic review of procedures is important to determine if the as written procedures are still applicable and reflect current practices. Any review has to be adequate to meet the regulatory intent of regulations. Therefore, this second comment was not adopted.

The Commission agrees with the comment to delete the word "accurately" from § 74.33(c)(2) because the quality of measurement performance is controlled by § 74.33(c)(3).

The comment to add the phase "U^{235} of the" before "active inventory" in § 74.33(c)(3)(ii) was adopted as a clarifying change consistent with the intent of the proposed language of the rule.

Section 74.33(c)(3)(iii) has been rewritten using the commenter's language to clarify the intent of "those requirements."

As suggested, the lead in clause of § 74.33(c)(4) has been rewritten without using the words "current and reliable knowledge."

The suggestion to use DOE material type codes was not adopted because it is sufficient to define the term for the material type in 10 CFR chapter I and a code number would not add any new information. In addition, the types of materials to be inventoried, i.e., natural, depleted, and enriched uranium, are listed in § 74.33(c)(4)(i). The parenthetical addition (e.g., in the enrichment equipment) was added to § 74.33(c)(4)(i) to clarify where in process uranium is located. The commenter's use of "cascade" is too restrictive for a generic rule but, the more general term "enrichment equipment" captures the intent. Therefore this comment was partially adopted.

Although § 74.33(c)(5)(i) was rewritten using the commenter's language, with an added time restraint of 370 calendar days, the revised language refers to SNM of moderate strategic significance, and detection of a specific quantity, i.e., up to 10,000 grams, of uranium enriched to between 10 and 20 percent is required because smaller quantities of this material may be difficult to detect using currently available detection equipment in a gas centrifuge enrichment facility. Hence this revised language does not allow production of enriched uranium greater than 10 percent as was suggested by the commenter but the detection program has to be able to detect quantities less than those of moderate strategic significance within 370 days. In addition, suggested measurement systems to be used by the detection program are discussed in the regulatory guide.

The comment to rewrite proposed § 74.33(c)(5)(ii) has not been adopted because both the Atomic Energy Act and the Commission's longstanding defense-in-depth policy that both unauthorized use and production of HEU should be prevented.

The suggestion to reword § 74.33(c)(6) to reflect § 74.31(c)(6) was not adopted because enrichment operations generally do not produce a significant number of long-lived items such as solutions having less than 5 grams U^{235} per liter. Nonetheless, § 74.33(c)(6) was restructured to clarify the amounts exempted.

The suggested rewording of § 74.33(c)(7) has not been adopted. Neither "standard error" nor "statistically significant" are defined in 10 CFR part 74 but, the level of significance for "statistical significance" is provided in the accompanying guidance.

The comment to allow by-difference accounting of U^{235} in tails was not

adopted because a material balance cannot be established if the material in tails is not measured.

(10) *Hardware.* One individual commenter wanted to add to § 74.33 a requirement that plant hardware be designed to permit and facilitate independent "go/no-go" verification of the absence of unauthorized enrichment. This commenter also suggested consulting with IAEA on the plant hardware design prior to authorization of construction.

Response. The Commission does not believe that the suggested hardware design is either necessary or practical. Based upon its experience with safeguarding SNM in licensed material activities, the Commission is convinced that a proper MC&A program can provide adequate protection against unauthorized enrichment, and assurance that should it occur, it will be detected in a timely manner. Therefore, the Commission does not believe it is necessary to impose such a requirement. Furthermore, as it is the NRC's responsibility to license the enrichment facility, its requirements for protection of health and safety of the public and common defense and security take precedence over IAEA inspection schemes and protocols. Nonetheless, these MC&A requirements were developed cognizant of IAEA programs because the U.S. is a member country of IAEA and complies with the IAEA requirements. Consequently, the suggestion of the commenter is refused.

Discussion of Final Rule Text

This section discusses the final rule text and modifications made in response to the proposed rule. Throughout the following discussion, referring to the text of the final regulations may aid in understanding the specific points of this discussion.

Part 70—Domestic Licensing of Special Nuclear Material

The phase "operate an uranium enrichment facility" has been added to § 70.22(b) for clarification.

The phrase "at an uranium enrichment facility" has been added following the words "source material in § 70.32(c)(1) to clarify that only uranium source material at an enrichment facility is subject to part 70 requirements.

Part 74—Material Control and Accounting of Special Nuclear Material

Section 74.4 Definitions

Based on public comment a definition of the term *item* has been added.

Section 74.11 Reports of Loss or Theft or Attempted Theft or Unauthorized Production of Special Nuclear Material

This section has been revised to be consistent with the proposed requirements of § 74.33(c)(5).

Section 74.31 Nuclear Material Control and Accounting for Special Nuclear Material of Low Strategic Significance

Based on pubic comment, § 74.31(a) is revised to include production facilities licensed pursuant to part 70 in the list of facilities to which this section does not apply.

Section 74.33 Nuclear Material Control and Accounting for Uranium Enrichment Facilities Authorized To Produce Special Nuclear Material of Low Strategic Significance

Based on public comment, § 74.33(a)(1) has been rewritten to clarify the general objective to both maintain the appropriate information and to periodically confirm the quantities and locations of the source material and special nuclear material by conducting physical inventories. Specific objectives for physical inventories are subsequently provided in § 74.33(c)(4). Thus, the phrase "and periodically confirm the quantities and locations of" was added to § 74.33(a)(1).

Based on public comment, the word "any" in proposed § 74.33(a)(2) between "detect" and "production" has been deleted. Also, in proposed § 74.33(a)(5) the word "any" between "of" and "production" has been deleted. The removal of the word "any" eliminates the apparent restrictions and does not change the intent of the rule.

Typographical errors were identified by public comment in proposed § 74.33(a) (3), (5), and (6). The word "for" between "production" and "uranium" has been changed to "of" in each of the three identified general performance objectives.

New performance objectives § 74.33(a) (7), (8), and (9) to provide information to aid in the investigation of missing uranium and unauthorized enrichment have been added based on public comment.

In proposed § 74.33(b)(1), the introductory phrase "no later than 2 years prior to facility start up" has been deleted. This was necessary to make this section consistent with existing § 70.22(b) which requires the submittal of the applicants program for control and accounting of the SNM, that will be in its possession under the license, with the license application. Section 74.33(b)(1) also was expanded to include the recordkeeping requirements of proposed § 74.33(d) in the submitted plan.

For clarity, the phrase "based on all measurement error contributions," has been added after inventory difference in § 74.33(c)(3)(ii) to ensure that licensees understand that the standard error of inventory difference is calculated using only those variance contributions due to measurements.

Based on public comment, the word "accurately" has been deleted before the words "measured values" in § 74.33(c)(2). The word "accurately" is not needed because § 74.33(c)(3) has bounds for the control of all MC&A measurement systems.

For clarity, the phrase "based on all measurement error contributions," has been added after inventory difference in § 74.33(c)(3)(ii).

Based on public comment, the clarifying phrase "of (c)(3) (i) and (ii) of this section" was added to § 74.33(c)(3)(iii).

Based on public comment, the introductory statement of proposed § 74.33(c)(4) has been revised. The recordkeeping requirements of proposed § 74.33(d) are required to be in the FNMC plan, so the requirement for current and reliable data does not need to be established twice.

In proposed § 74.33(c)(4)(i), the parenthetical phrase (e.g., in the enrichment equipment) has been added to clarify the term "in-process" because a public comment appeared to incorrectly interpret "in-process" (comment requesting the NRC to add a definition for "dynamic inventory").

The proposed § 74.33(c)(5) has been revised by deleting "any" and modifying (c)(5) (i) and (ii) and renumbering proposed (c)(5)(ii) as (c)(5)(iii) to require that the licensee's detection system be capable of detecting: the production of uranium enriched to 10 percent or more in the isotope U^{235}, to the extent that SNM of moderate strategic significance could be produced within any 370 calendar day period; the production of HEU; and the unauthorized production of uranium of low strategic significance.

The proposed § 74.33(c)(6) was rearranged and based on public comment the phrase "from the requirements of (c)(6) (i) and (ii)" was added.

Having considered all comments received, the Commission has determined that the final rule should be promulgated.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy

Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that these amendments are not a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. The rule is mainly administrative in nature and would not change any requirements that could have significant environmental impact. The final rule will provide assurance through material control and accounting measures and other appropriate requirements, that only enriched uranium of low strategic significance as authorized by the license is produced at a licensed enrichment facility. There may be some increase in occupational exposure stemming from safeguards-related activities such as data recording, inspecting, or sample taking, but likely not enough to be measurable or identifiable. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.)*. These requirements were approved by the Office of Management and Budget approval number 3150–0123 at the proposed rule stage. Additional requirements contained in the final rule will not become effective until OMB approves them. Notice of OMB approval will be published in the **Federal Register.**

Regulatory Analysis

The Commission prepared a draft regulatory analysis for the proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requested public comments on the draft regulatory analysis, but no comments were received. The draft regulatory analysis has been revised to reflect the addition of three new performance objectives contained in § 74.33(a) (7), (8), and (9), and the fact that a license application has been received by the Commission for the construction and operation of an uranium enrichment facility. The final regulatory analysis is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. The final rule will affect only persons who build or operate enrichment facilities producing enriched uranium of low strategic significance. The owners of enrichment facilities do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The Commission has determined that a backfit analysis is not required for this final amendment, because the backfit rule, 10 CFR 50.109, applies only to new requirements for power reactors. See 50 FR 38097 (September 20, 1985) (final backfit rule). However, as noted above, the Commission has prepared a regulatory analysis examining the benefits and impacts of these amendments.

List of Subjects

10 CFR Part 2

Administrative practice and procedures, Antitrust, Byproduct material, Classified information, Penalty, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Criminal penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Criminal penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 74

Accounting, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Criminal penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the Commission is adopting the following amendments to 10 CFR parts 2, 40, 70, and 74.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); Sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). (Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In appendix C, supplement III is amended by adding new paragraphs A.3 and B.4 to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

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Supplement III—Severity Categories

Safeguards

A. * * *

3. Actual unauthorized production of a formula quantity of special nuclear material.

B. * * *

4. Actual unauthorized production of special nuclear material.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35(a)–(d) and (f), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950, as amended, (42 U.S.C. 2201(b), 2201(i), and 2201(o)), and §§ 40.5, 40.9, 40.25(c), (d)(3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 40.1, paragraph (a) is revised to read as follows:

§ 40.1 Purpose.

(a) The regulations in this part establish procedures and criteria for the issuance of licenses to receive title to, receive, possess, use, transfer, or deliver source and byproduct materials, as defined in this part, and establish and provide for the terms and conditions upon which the Commission will issue such licenses. (Additional requirements applicable to natural and depleted uranium at enrichment facilities are set forth in § 70.22 of this chapter.) These regulations also provide for the disposal of byproduct material and for the long-term care and custody of byproduct material and residual radioactive material. The regulations in this part also establish certain requirements for the physical protection of import, export, and transient shipments of natural uranium. (Additional requirements appl cable to the import and export of natural uranium are set forth in part 110 of this chapter.)

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

5. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, Sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under Secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, Sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under Sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.7(g), 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24 (a) and (b), 70.32 (a) (3), (5) and (6), (d) and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950, as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51 (c)–(g), 70.56, 70.57 (b) and (d), 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k) and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 70.22, paragraph (b) is revised and new paragraph (m) is added to read as follows:

§ 70.22 Contents of applications.

* * * * *

(b) Each application for a license to possess special nuclear material, or to possess equipment capable of enriching uranium, or to operate an uranium enrichment facility, or to possess and use at any one time and location special nuclear material in a quantity exceeding one effective kilogram, except for applications for use as sealed sources and for those uses involved in the operation of a nuclear reactor licensed pursuant to part 50 of this chapter and those involved in a waste disposal operation, must contain a full description of the applicant's program for control and accounting of such special nuclear material or enrichment equipment that will be in the applicant's possession under license to show how compliance with the requirements of §§ 70.58, 74.31, 74.33, or 74.51 of this chapter, as applicable, will be accomplished.

* * * * *

(m) Each application for a license to possess equipment capable of enriching uranium or operate an enrichment facility, and produce, possess, or use more than one effective kilogram of special nuclear material at any site or contiguous sites subject to control by the applicant, must contain a full description of the applicant's security program to protect against theft, and to protect against unauthorized viewing of classified enrichment equipment, and unauthorized disclosure of classified matter in accordance with the requirements of 10 CFR parts 25 and 95.

7. In § 70.32, paragraph (c)(1) is revised to read as follows:

§ 70.32 Conditions of license.

* * * * *

(c)(1) Each license authorizing the possession and use at any one time and location of uranium source material at an uranium enrichment facility or special nuclear material in a quantity exceeding one effective kilogram, except for use as sealed sources and those uses involved in the operation of a nuclear reactor licensed pursuant to part 50 of this chapter and those involved in a waste disposal operation, shall contain and be subject to a condition requiring the licensee to maintain and follow:

(i) The program for control and accounting of uranium source material at an uranium enrichment facility or special nuclear material and fundamental nuclear material controls implemented pursuant to § 70.22(b), 70.58(1), 74.31(b), 74.33(b), or 74.51(c)(l) of this chapter, as appropriate;

(ii) The measurement control program for uranium source material at an uranium enrichment facility or special nuclear material control and accounting implemented pursuant to § 70.57(c), 74.31(b), 74.33(b), or 74.59(e) of this chapter, as appropriate; and

(iii) Such other material control procedures as the Commission determines to be essential for the safeguarding of uranium source material at an uranium enrichment facility or of special nuclear material and providing that the licensee shall make no change that would decrease the effectiveness of the material control and accounting program implemented pursuant to § 70.22(b), 70.58(l), 70.51(g), 74.31(b), 74.33(b), or 74.51(c)(1) of this chapter and the measurement control program

implemented pursuant to § 70.57(c), 74.31(b), 74.33(b), or 74.59(e) of this chapter without the prior approval of the Commission. A licensee desiring to make such changes shall submit an application for amendment to its license pursuant to § 70.34.

* * * * *

8. In § 70.51, the introductory text of paragraph (b) is revised to read as follows:

§ 70.51 Material balance, inventory, and records requirements.

* * * * *

(b) Licensees subject to the recordkeeping requirements of §§ 74.31, 74.33 and 74.59 of this chapter are exempt from the requirements of § 70.51(b) (1) through (5). Otherwise:

* * * * *

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for part 74 is revised to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, Sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 74.17, 74.31, 74.33, 74.51, 74.53, 74.55, 74.57, 74.59, 74.81, and 74.82 are issued under secs. 161b and 161i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b) and 2201(i)); and §§ 74.11, 74.13, 74.15, and 74.17, are issued under Sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

10. In § 74.1, paragraph (a) is revised to read as follows:

§ 74.1 Purpose.

(a) This part has been established to contain the requirements for the control and accounting of special nuclear material at fixed sites and for documenting the transfer of special nuclear materials. General reporting requirements as well as specific requirements for certain licensees possessing special nuclear material of low strategic significance and formula quantities of strategic special nuclear material are included. Requirements for the control and accounting of source material at enrichment facilities are also included. The specific control and accounting requirements for other licensees are contained in §§ 70.51, 70.57, and 70.58 of this chapter.

* * * * *

11. In § 74.2, paragraphs (b) and (c) are revised to read as follows:

§ 74.2 Scope.

* * * * *

(b) In addition, specific control and accounting requirements are included for certain licensees who:

(1) possess and use formula quantities of strategic special nuclear material,

(2) possess and use special nuclear material of low strategic significance, or

(3) possess uranium source material and equipment capable of producing enriched uranium.

(c) Specific control and accounting requirements for special nuclear material of moderate strategic significance and for miscellaneous categories of licensees who possess special nuclear material are contained in §§ 70.51, 70.57, and 70.58 of this chapter.

12. In § 74.4, the terms "batch" and "item" are added to read as follows:

§ 74.4 Definitions.

* * * * *

Batch means a portion of source material or special nuclear material handled as a unit for accounting purposes at a key measurement point and for which the composition and quantity are defined by a single set of measurements. The source material or special nuclear material may be in bulk form or contained in a number of separate items.

* * * * *

Item means any discrete quantity or container of special nuclear material or source material, not undergoing processing, having an unique identity and also having an assigned element and isotope quantity.

* * * * *

13. In § 74.8, paragraph (b) is revised to read as follows:

§ 74.8 Information collection requirements; OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 74.11, 74.13, 74.31, 74.33, 74.51, 74.57, and 74.59.

* * * * *

14. In § 74.11, the section heading and paragraph (a) are revised to read as follows:

§ 74.11 Reports of loss or theft or attempted theft or unauthorized production of special nuclear material.

(a) Each licensee who possesses one gram or more of contained uranium-235, uranium-233, or plutonium shall notify the NRC Operations Center within 1 hour of discovery of any loss or theft or other unlawful diversion of special nuclear material which the licensee is licensed to possess, or any incident in which an attempt has been made to commit a theft or unlawful diversion of special nuclear material. The requirement to report within 1 hour of discovery does not pertain to measured quantities of special nuclear material disposed of as discards or inventory difference quantities. Each licensee who operates an uranium enrichment facility shall notify the NRC Operations Center within 1 hour of discovery of any unauthorized production of enriched uranium. For centrifuge enrichment facilities the requirement to report enrichment levels greater than that authorized by license within 1 hour does not apply to each cascade during its start-up process, not to exceed the first 24 hours.

* * * * *

15. In § 74.17, paragraph (a) is revised to read as follows:

§ 74.17 Special nuclear material physical inventory summary report.

(a) Each licensee subject to the requirements of § 74.31 or § 74.33 shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 60 calendar days from the start of the physical inventory required by § 74.31(c)(5) or § 74.33(c)(4) of this chapter. The licensee shall report the inventory results by plant and total facility to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

* * * * *

16. In § 74.31, paragraph (a) is revised to read as follows:

§ 74.31 Nuclear material control and accounting for special nuclear material of low strategic significance.

(a) *General performance objectives.* Each licensee who is authorized to possess and use more than one effective kilogram of special nuclear material of low strategic significance, excluding sealed sources, at any site or contiguous sites subject to control by the licensee, other than a production or utilization facility licensed pursuant to part 50 or 70 of this chapter, or operations involved in waste disposal, shall implement and maintain a Commission approved material control and accounting system that will achieve the following objectives:

* * * * *

17. A new § 74.33 is added to subpart C to read as follows:

§ 74.33 Nuclear material control and accounting for uranium enrichment facilities authorized to produce special nuclear material of low strategic significance.

(a) *General performance objectives.* Each licensee who is authorized by this chapter to possess equipment capable of enriching uranium or operate an enrichment facility, and produce, possess, or use more than one effective kilogram of special nuclear material of low strategic significance at any site or contiguous sites, subject to control by the licensee, shall establish, implement, and maintain a NRC-approved material control and accounting system that will achieve the following objectives:

(1) Maintain accurate, current, and reliable information of and periodically confirm the quantities and locations of source material and special nuclear material in the licensee's possession;

(2) Protect against and detect production of uranium enriched to 10 percent or more in the isotope U^{235};

(3) Protect against and detect unauthorized production of uranium of low strategic significance;

(4) Resolve indications of missing uranium;

(5) Resolve indications of production of uranium enriched to 10 percent or more in the isotope U^{235} (for centrifuge enrichment facilities this requirement does not apply to each cascade during its start-up process, not to exceed the first 24 hours);

(6) Resolve indications of unauthorized production of uranium of low strategic significance;

(7) Provide information to aid in the investigation of missing uranium;

(8) Provide information to aid in the investigation of the production of uranium enriched to 10 percent or more in the isotope U^{235}; and

(9) Provide information to aid in the investigation of unauthorized production of uranium of low strategic significance.

(b) *Implementation dates.* Each applicant for a license who would, upon issuance of a license pursuant to any part of this chapter, be subject to the requirements of paragraph (a) of this section shall:

(1) Submit a fundamental nuclear material control plan describing how the performance objectives of § 74.33(a), the system features and capabilities of § 74.33(c), and the recordkeeping requirements of § 74.33(d) will be met; and

(2) Implement the NRC approved plan submitted pursuant to paragraph (b)(1) of this section prior to:

(i) The cumulative receipt of 5,000 grams of U^{235} contained in any combination of natural, depleted, or enriched uranium or

(ii) NRC's issuance of a license to test or operate the enrichment facility; whichever occurs first.

(c) *System features and capabilities.* To meet the general performance objectives of paragraph (a) of this section, the Material Control and Accounting (MC&A) system must include the features and capabilities described in paragraphs (c) (1) through (8) of this section. The licensee shall establish, document, and maintain:

(1) A management structure that ensures:

(i) Clear overall responsibility for MC&A functions;

(ii) Independence of MC&A management from production responsibilities;

(iii) Separation of key MC&A responsibilities from each other; and

(iv) Use of approved written MC&A procedures and periodic review of those procedures;

(2) A measurement program that ensures that all quantities of source material and special nuclear material in the accounting records are based on measured values;

(3) A measurement control program that ensures that:

(i) Measurement bias is estimated and minimized through the measurement control program, and any significant biases are eliminated from inventory difference values of record;

(ii) All MC&A measurement systems are controlled so that twice the standard error of the inventory difference, based on all measurement error contributions, is less than the greater of 5,000 grams of U^{235} or 0.25 percent of the U^{235} of the active inventory for each total plant material balance; and

(iii) Any measurements performed under contract are controlled so that the licensee can satisfy the requirements of paragraphs (c)(3) (i) and (ii) of this section;

(4) A physical inventory program that provides for:

(i) Performing, unless otherwise required to satisfy part 75 of this chapter, a dynamic (nonshutdown) physical inventory of in-process (e.g., in the enrichment equipment) uranium and U^{235} at least every 65 days, and performing a static physical inventory of all other uranium and total U^{235} contained in natural, depleted, and enriched uranium located outside of the enrichment processing equipment at least every 370 calendar days, with static physical inventories being conducted in conjunction with a dynamic physical inventory of in-process uranium and U^{235} so as to provide a total plant material balance at least every 370 calendar days; and

(ii) Reconciling and adjusting the book inventory to the results of the static physical inventory and resolving, or reporting an inability to resolve, any inventory difference that is rejected by a statistical test which has a 90 percent power of detecting a discrepancy of a quantity of U^{235}, established by NRC on a site-specific basis, within 60 days after the start of each static physical inventory;

(5) A detection program, independent of production, that provides high assurance of detecting:

(i) Production of uranium enriched to 10 percent or more in the U^{235} isotope, to the extent that SNM of moderate strategic significance could be produced within any 370 calendar day period;

(ii) Production of uranium enriched to 20 percent or more in the U^{235} isotope; and

(iii) Unauthorized production of uranium of low strategic significance;

(6) An item control program that ensures that:

(i) Current knowledge is maintained of items with respect to identity, uranium and U^{235} content, and stored location; and

(ii) Items are stored and handled, or subsequently measured, in a manner so that unauthorized removal of 500 grams or more of U^{235}, as individual items or as uranium contained in items, will be detected. Exempted from the requirements of paragraph (c)(6) (i) and (ii) of this section are licensed-identified items each containing less than 500 grams U^{235} up to a cumulative total of 50 kilograms of U^{235} and items that exist for less than 14 calendar days;

(7) A resolution program that ensures that any shipper-receiver differences are resolved that are statistically significant and exceed 500 grams U^{235} on:

(i) An individual batch basis; and

(ii) A total shipment basis for all source material and special nuclear material;

(8) An assessment program that:

(i) Independently assesses the effectiveness of the MC&A system at least every 24 months;

(ii) Documents the results of the above assessment;

(iii) Documents management's findings on whether the MC&A system is currently effective; and

(iv) Documents any actions taken on recommendations from prior assessments.

(d) *Recordkeeping.* (1) Each licensee shall establish records that will demonstrate that the performance objectives of paragraph (a) of this

section and the system features and capabilities of paragraph (c) of this section have been met and maintain these records in an auditable form, available for inspection, for at least 3 years, unless a longer retention time is required by part 75 of this chapter.

(2) Records that must be maintained pursuant to this part may be the original or a reproduced copy or a microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing, on demand, legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications must include all pertinent information such as stamps, initials, and signatures.

(3) The licensee shall maintain adequate safeguards against tampering with and loss of records.

Dated at Rockville, Maryland, this 24th day of October, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-26137 Filed 10-30-91; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Investment and Deposit Activities

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final rule will restrict access to certain high risk investments that have been purchased by a limited number of federal credit unions. The rule will also prohibit federal credit unions from investing in corporate credit unions that fail to meet certain regulatory criteria and require that each federal credit union establish written investment policies consistent with the Federal Credit Union Act, NCUA Rules and Regulations, and other applicable laws and regulations. The rule also establishes conditions under which a federal credit union must analyze the credit quality of an institution it is permitted to invest in under section 107(8) of the Federal Credit Union Act. Finally, certain provisions of the regulation have been updated to reflect the restructuring of the federal deposit insurance system, and to clarify that federal credit unions have the authority to invest in a mutual fund if the investments and investment transactions of the fund are legally permissible for federal credit unions under the Federal Credit Union Act and NCUA Rules and Regulations.

EFFECTIVE DATE: December 2, 1991, except that the effective date of the prohibition contained in § 703.5(e) is delayed until March 1, 1992.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Lisa Henderson, Staff Attorney, Office of General Counsel (202-682-9630), or Charles Felker, Investment Officer, Office of Examination and Insurance (202-682-9640), at the above address.

SUPPLEMENTARY INFORMATION:

A. Background

On March 21, 1991, the NCUA Board published proposed changes to part 703 of the NCUA Rules and Regulations (See 56 FR 11944, Mar. 21, 1991). The changes were proposed pursuant to NCUA's established policy of reviewing its regulations at regular intervals. The proposal was issued with a 60-day comment period.

B. Comments

Forty-three comment letters were received: Twenty-four from federal credit unions, six from state chartered credit unions, one from a corporate credit union, three from state leagues, two from national trade associations, one from a state credit union regulator, one from a credit union bonding company, three from securities brokerage firms, and two from mortgage-related corporations. Six commenters approved of the proposal as written, while one commenter objected to it in its entirety. Thirteen commenters generally approved of the rule as written, suggesting only minor changes. The remainder of the commenters discussed specific provisions without expressing an opinion on the regulation as a whole.

C. Discussion and Authority

Section 703.1 Scope

No changes were made to this section. Two commenters noted, however, that although this section states that part 703 applies to federal credit unions, the supplementary information discussion of § 703.5 contained references to federally insured state credit unions.

The NCUA Board wishes to clarify that the provisions of part 703 apply to federal credit unions. The Board notes, however, that federally insured state credit unions are required to establish an additional special reserve for investments if those credit unions are permitted by their respective states to make investments beyond those authorized by the Federal Credit Union Act and NCUA Rules and Regulations. This requirement is contained in part 741 of the NCUA Rules and Regulations (Requirements for Insurance), which applies to federal credit unions, federally insured state credit unions and credit unions making application for insurance of accounts pursuant to title II of the Federal Credit Union Act.

The NCUA Board also notes that federally insured state credit unions operating under state statutes that have "parity provisions" with respect to the investment powers conferred by the Federal Credit Union Act and NCUA Rules and Regulations will also be impacted by the final rule.

Section 703.2 Definitions

This section of the proposal included a number of new key terms and definitions. No comments were received relative to this section; accordingly, this section of the proposed rule has been carried into the final rule unchanged.

Section 703.3 Investment Policies

The proposed rule required each federal credit union to establish written investment policies consistent with the Federal Credit Union Act, NCUA Rules and Regulations, and other applicable laws and regulations, and to review them at least annually.

Eight commenters specifically agreed with this section. One commenter suggested, however, that the term "interest rate risk," which is listed in paragraph (e) as a consideration that must be addressed by written investment policies, be clarified in the supplementary information section. In response to this suggestion, the Board notes that "interest rate risk" is the risk that the general level of interest rates may rise, this causing the market value of outstanding obligations to fall. Federal credit unions can limit this risk by establishing written policies controlling the maturity distribution of the investment portfolio. Several commenters questioned the meaning of the term "approved" used in paragraph (h) when referring to the list of safekeeping facilities. The NCUA Board notes that the term "approved" was meant to refer to safekeeping facilities approved by the credit union's board of directors. The NCUA Board has clarified the meaning of the word "approved" in the final rule.

One commenter objected to the proposed provision, stating that NCUA should deal with the credit unions that have invested improperly rather than proposing a rule which will unnecessarily affect all credit unions. As indicated in the preamble to the proposed rule, NCUA has continually encouraged federal credit unions to develop written investment policies. Unfortunately, a significant number of federal credit unions have not developed written investment policies or have developed written policies that are inadequate because they fail to address certain basic investment considerations. Recognizing that such fundamental inadequacies can result in losses to credit unions and the National Credit Union Administration Share Insurance Fund (NCUSIF), the NCUA Board continues to believe that the proposed rule is justified.

Section 703.4 Authorized Activities

A proposed amendment to paragraph (c) established conditions under which a federal credit union would be required to analyze the credit quality of an institution it is permitted to invest in under section 107(8) of the Federal Credit Union Act. Under the proposed rule, a federal credit union is required to make such an analysis whenever a contemplated investment in one of these institutions is not fully covered by federal deposit insurance.

Nine commenters were in favor of the proposed revision although a number suggested changes or requested clarifications. One commenter suggested that the phrase "deposit in a section 107(8) institution" be defined in the regulation rather than merely discussed in the supplementary information section. The Board notes that the term "deposit" cannot be precisely defined for purposes of the regulation. Any attempt to construct such a definition would be frustrated by the growing universe of bank liability products that may be permissible investments for federal credit unions. Rather than attempting to define the term "deposit" in part 703 of the NCUA Rules and Regulations, NCUA has generally looked to the Federal Reserve's Regulation D for guidance. Regulation D contains the reserve requirements for depository institutions, including federal credit unions, and also defines the term "deposit." NCUA has followed this definition in determining what constitutes a deposit liability for purposes of section 107(8) of the Federal Credit Union Act. A collateral benefit of this approach is that it has allowed NCUA to expand federal credit union deposit authority from time to time without having to amend its own regulation.

Two other commenters stated that their board of directors, not NCUA, should determine credit quality. The NCUA Board agrees with this statement and emphasizes that it does not intend to determine credit quality for federal credit unions. The credit quality of the issuing institution must be determined by the credit union itself consistent with the written policies and procedures established by the board of directors.

Another commenter requested clarification on what is to be included in the credit analysis and when such an analysis should be done. While the regulation does not specify a procedure to be followed in making a credit analysis, it is believed that most federal credit unions will want to rely, at least in part, on an outside rating service that specializes in evaluating the credit quality of financial institutions. Federal credit unions are also encouraged to review copies of the institution's current financial statements, as well as any other data deemed relevant to the review. As noted in the preamble to the proposed rule, evaluating the credit quality of a financial institution is an on-going process which must continue throughout the life of the investment. While the rule does not establish minimum intervals at which the initial credit analysis must be updated, the NCUA Board anticipates that most credit unions will want to update the initial analysis no less frequently than every 90 days. The credit quality of the financial institution should also be carefully monitored between periodic updates.

The final rule also contains a new paragraph (j), which clarifies that federal credit unions have the authority to invest in mutual funds if the investments and investment transactions of the fund are legally permissible as direct investments for federal credit unions under the Federal Credit Union Act and NCUA Rules and Regulations.

Section 703.5 Prohibitions

Corporate Credit Unions

The proposed rule prohibited federal credit unions from investing in a corporate credit union unless the corporate credit union meets both of the following conditions:

(1) The corporate credit union must operate in substantial compliance with part 704 of the NCUA Rules and Regulations; and

(2) The corporate credit union must be examined by NCUA.

NCUA has proposed revisions to part 704 of the NCUA Rules and Regulations, expanding the powers and authorities of federal corporate credit unions. NCUA believes that all corporate credit unions should be examined by NCUA corporate examiners. Questions regarding the degree of compliance with part 704 will be determined by the appropriate NCUA regional director with the concurrence of NCUA's Washington Office. Under the proposed rule, corporate credit unions deemed not to be in substantial compliance with part 704 are impermissible investments for federal credit unions.

Eight commenters supported this proposal although some suggested minor changes or requested clarifications. Several commenters were confused about whether a nonfederally insured corporate had to operate in substantial compliance with part 704 and be examined by NCUA in order to be a permissible investment for a federal credit union. The NCUA Board notes that the above criteria apply to all corporate credit unions, meaning that a nonfederally insured corporate credit union must also meet the above-mentioned criteria in order to be a permissible investment for a federal credit union.

As noted in the preamble to the proposed rule, questions regarding the degree of compliance with part 704 will be determined by the appropriate regional director. Under currently proposed revisions to part 704, each corporate credit union will have 180 days to comply with that rule. Where a regional director subsequently determines that a corporate credit union is not in substantial compliance with part 704, and, as such, is not permitted to do business with federal credit unions, the regional director will notify the federal credit union members of that corporate credit union's noncompliance The NCUA Board also notes that a corporate credit union will be deemed to be in substantial compliance with part 704, provided that the safety and soundness of the corporate credit union is not threatened.

In response to the concerns of a state regulator, the Board wishes to emphasize that NCUA does not anticipate any changes in the present arrangement for examining state-chartered corporate credit unions. Under the current arrangement, NCUA and state examiners jointly conduct the examination. At the conclusion of the examination, the examination report is prepared by NCUA and/or the state regulator depending on the arrangement with the particular state. As before, any

state-chartered corporate credit union that disagrees with the examination findings may appeal the findings to the state regulator and/or NCUA.

Mortgage Derivative Products

The proposed rule prohibited federal credit unions from purchasing the following mortgage-backed security (MBS) derivatives: Stripped Mortgage-Backed Securities (SMBS); Collateralized Mortgage Obligation (CMO) and Real Estate Mortgage Investment Conduit (REMIC) tranches whose average life would extend or is shortened by more than 6 years under modeling scenarios where mortgage commitment rates immediately rise or fall 300 basis points; and residual interests in CMO and REMIC transactions. An important principle underlying this section of the proposed rule is that SMBSs, CMO and REMIC tranches which fail the average life test, and CMO and REMIC residuals possess average life or price volatility in excess of the average life or price volatility typically associated with a whole MBS.

Eight commenters approved of the proposal to prohibit investment in SMBS and five opposed it. One commenter questioned NCUA's authority to prohibit the purchase of SMBS, since they are authorized investments under the Federal Credit Union Act. Three commenters indicated that SMBS may be appropriate holdings for credit unions where they are used to reduce interest rate risk. Eight commenters agreed with the proposal to prohibit investment in CMO and REMIC tranches that fail the average life test, although several requested clarification regarding the application of the test. Ten commenters opposed the proposal, several expressing concern that it would prohibit investments that can enhance the performance of a credit union's investment portfolio. Two commenters suggested that the average life test should not be applied to floating rate tranches. Four commenters supported the proposal to prohibit investment in CMO and REMIC residuals, while an equal number opposed it. One commenter stated that the CMO/REMIC marketplace has evolved rapidly during the past few years and that not all residuals exhibit the same amount to risk.

The NCUA Board again emphasizes that SMBS, CMO and REMIC residuals, and CMO and REMIC tranches that fail the average life test typically have a higher degree of average life or price volatility than whole MBS. Since most of these "high risk" derivatives tend to trade in "thin markets," a federal credit union holding any of these securities may also be subjected to a significant degree of marketability risk, or the risk that the security may have to be disposed of at a significant loss if it suddenly needs to be sold. In addition, as mentioned in the preamble to the proposed rule, with the IO portion of an SMBS or a typical CMO residual, it is possible for the investor to experience a loss of principal even when the security is held to maturity.

For all of these reasons, the NCUA Board continues to conclude that SMBS, CMO and REMIC tranches that fail the average life test, and CMO and REMIC residuals are unsuitable investments for the vast majority of federal credit unions.

At the same time, the NCUA Board recognizes that these "high risk" derivatives may be suitable investments for some federal credit unions where they are used to reduce interest rate risk. For example, a federal credit union with a sophisticated and well-managed securities or mortgage portfolio might employ the IO portion of an SMBS or a bearish residual to offset a decline in the market value of the portfolio in a rising interest rate environment. Similarly, a federal credit union that makes mortgage loans and then sells them in the secondary market might employ certain types of CMO tranches that fail the average life test to protect the market value of the mortgages prior to selling them in the secondary market.

Based on the foregoing analysis, the NCUA Board has decided to prohibit the purchase of SMBS, CMO and REMIC tranches that fail the average life test, and CMO and REMIC residuals, except where these securities are acquired solely to reduce interest rate risk. Under the final rule, a federal credit union purchasing any of these "high risk" derivatives to reduce interest rate risk must have a monitoring and reporting system in place that provides the documentation necessary to evaluate the expected and actual performance of the securities under different interest rate scenarios. The credit union must use this system to conduct and document an analysis that shows, prior to purchase, that the proposed acquisition of the security will reduce the credit union's interest rate risk. Subsequent to purchase, the credit union must evaluate the document, at least quarterly, whether the security has actually reduced interest rate risk. Federal credit unions acquiring any of these "high risk" derivatives to reduce interest rate risk must also report the securities as trading assets at market value or as held-for-sale assets at the lower of cost or market value until their disposition.

Recognizing that variable rate investments can afford federal credit unions some protection against interest rate risk, the NCUA Board has also decided to exclude certain variable or floating rate CMO tranches from the average life test. To qualify for the exclusion, the interest rate of the instrument must reset, at least annually, and the instrument must have a maximum allowable interest rate at least 300 basis points above its interest rate at the time of purchase. The exclusion does not apply to floating rate instruments whose interest rate varies inversely with the related interest rate index or whose interest rate adjusts as a multiple of the change in the related index (i.e., inverse floating or super floating CMO tranches).

As noted above, a number of commenters requested clarification regarding the application of the average life variability test. A number of these commenters wondered how often a CMO tranche should be retested after it has been purchased. While the rule does not specify a minimum retesting period for these investments, the NCUA Board recommends that federal credit unions retest these investments at least annually. As one commenter noted, such a test could be carried out in connection with the board of director's annual review of its investment policies.

This same commenter suggested that the final regulation contain a liquidation schedule for CMO tranches that fail the average life test on a subsequent review date. The NCUA Board is concerned that such a schedule might prove to be too rigid, depending on the particular circumstances of the case under review. NCUA prefers to handle these situations on a case-by-case basis under existing supervisory politics and procedures. Generally, existing supervisory policies and procedures would allow NCUA and the affected credit union to agree to a liquidation schedule appropriate to the particular circumstances of the case, taking into account all relevant factors, including the dollar amount of the investment, the remaining time to maturity, and the credit union's earnings and capital position where the sale of the investment would result in a significant loss to the credit union.

For purposes of determining whether or not a particular CMO tranche passes the average life test, federal credit unions may use standard industry calculators (Bloomberg, etc.) employed in the mortgage-related securities marketplace. NCUA examiners will review the credit union's calculations

for reasonableness. Where the results of a credit union's calculations differ significantly from those results produced by standard industry calculators, the examiner may use a standard industry calculator to determine whether or not the investment passes the average life test.

Finally, in response to the comment that the NCUA Board does not have the authority to prohibit or restrict access to investments authorized by the Federal Credit Union Act, the NCUA Board notes that it has previously determined that it does have such authority where it determines that any such investment presents significant safety and soundness concerns.

Zero Coupon Bonds

The proposed regulation prohibited the purchase of a zero coupon bond with a remaining maturity of more than 10 years. Five commenters agreed with the prohibition, while seven disagreed with it. One commenter opposing the proposal stated that it was arbitrary.

The NCUA Board does not agree with the statement that the proposed prohibition is arbitrary. To the contrary, as pointed out in the preamble to the proposed rule, longer maturity issues of these securities (generally, maturities in excess of 10 years) have exhibited extreme price volatility and may cause unintended changes in a credit union's earnings and its interest rate, liquidity and funding risk profile. Therefore, the NCUA Board continues to believe that these investments are generally unsuitable for all federal credit unions. Accordingly, the proposal to prohibit the purchase of zero coupon securities with remaining maturities of more than 10 years is carried into the final rule unchanged.

Section 703.6 of the proposed rule required federal credit unions holding SMBS, CMO/REMIC residuals, CMO/REMIC tranches which fail the average life test, and zero coupon securities with remaining maturities of more than 10 years to dispose of the prohibited investments within 1 year of the effective date of the regulation.

Thirty-one commenters disapproved of the proposal, the majority stating that it could force federal credit unions to take unnecessary losses. In light of these comments, the NCUA Board has decided to "grandfather" existing investments in SMBS, CMOs/REMICs, and zero coupon securities that do not conform to the final rule. The final rule contains a "grandfather" provision at the beginning of § 703.5, and § 703.6 has been deleted.

The NCUA Board wishes to emphasize, however, that the "grandfather" provision only applies where a prohibited investment has been purchased prior to publication of this rule in the **Federal Register**. The Board also notes that NCUA examiners will seek the orderly disposal of these "grandfathered" investments, where, in their opinion, such investments constitute a significant threat to the continued sound operation of a federal credit union.

D. Regulatory Procedures

Regulatory Flexibility Act. The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets).

Based on the experience of NCUA examiners, few small credit unions are engaging in the investment practices that are the subject of the final rule. Accordingly, the NCUA Board determines and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act. Section 703.3 of the final rule requires federal credit unions to establish written investment policies. Section 703.4(c) requires federal credit unions to analyze the credit quality of any uninsured deposits in section 107(8) institutions and to record their decisions regarding the investments. These recordkeeping requirements will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Written comments and recommendations regarding the collection requirements should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503, Attn: Jerry Waxman.

Executive Order 12612. Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The Board determines that the final rule will not have a substantial direct effect on the states, on the relationship of the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 703

Credit unions, Investments.

By the National Credit Union Administration Board on October 17, 1991.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR Part 703 is revised to read as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. Part 703 is revised to read as follows:

Sec.

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15), 1766(a), 1789(11).

§ 703.1 Scope.

Sections 107(7), 107(8), and 107(15) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8), 1757(15), set forth those securities, deposits, and other obligations in which federal credit unions may invest. Included are securities issued or fully guaranteed by the United States Government or any of its agencies, shares of central credit unions and any federally insured credit union, accounts in other federally insured financial institutions, certain mortgages and mortgage-related securities, and other specified investments. This Part interprets several of the provisions of sections 107(7), 107(8) and 107(15)(B). It also places limits on the types of transactions that federal credit unions may enter into in connection with the purchase and sale of authorized securities, deposits, and obligations under sections 107(7), 107(8) and 107(15)(B) This part does not apply to: Investments in loans to members and related activities, which are governed by §§ 701.21, 701.22 and 701.23 (12 CFR 701.21, 701.22 and 701.23); to the purchase of real estate-secured loans pursuant to § 107(15)(A), which is governed by § 701.23; to investment in credit union service organizations, which is governed by § 701.27 (12 CFR 701.27); or to investment in fixed assets, which is governed by § 701.36 (12 CFR 701.36).

§ 703.2 Definitions.

Adjusted trading means any method or transaction used to defer a loss whereby a federal credit union sells a security to a vendor at a price above its current market price and simultaneously purchases or commits to purchase from the vendor another security at a price above its current market price.

Average life means the weighted average time to principal repayment with the amount of the principal paydowns (both scheduled and unscheduled) as the weights.

Bailment for hire contract means a contract whereby a third party, bank or other financial institution, for a fee, agrees to exercise ordinary care in protecting the securities held in safekeeping for its customers.

Bankers' Acceptance means a time draft that is drawn on and accepted by a bank, and that represents an irrevocable obligation of the bank.

Cash forward agreement means an agreement to purchase or sell a security with delivery and acceptance being mandatory and at a future date in excess of thirty (30) days from the trade date.

Collateralized Mortgage Obligation (CMO) means a multi-class bond issue collateralized by whole loan mortgages or mortgage-backed securities (MBS). CMOs usually consist of four or more classes of bonds which are commonly referred to as "tranches".

Corporate credit union means a credit union that conforms to the definition of "corporate credit union" as contained in part 704 of this chapter.

Eurodollar deposit means a deposit in a foreign branch of a United States depository institution.

Facility means the home office of a federal credit union or any suboffice thereof including, but not necessarily limited to, a wire service, telephonic station, or mechanical teller station.

Federal funds transaction means a short-term or open-ended transfer of funds to a section 107(8) institution.

Futures contract means a contract for the future delivery of commodities, including certain government securities, sold on commodities exchanges.

Immediate family member means a spouse or other family members living in the same household.

Market price means the last established price at which a security is sold.

Maturity date means the date on which a security matures, and shall not mean the call date or the average life of the security.

Real Estate Mortgage Investment Conduit (REMIC) means a nontaxable entity formed for the sole purpose of holding a fixed pool of mortgages secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

Repurchase transaction means a transaction in which a federal credit union agrees to purchase a security from a vendor and to resell the same or any identical security to that vendor at a later date. A repurchase transaction may be of three types:

(1) *Investment-type repurchase transaction* means a repurchase transaction where the federal credit union purchasing the security takes physical possession of the security, or receives written confirmation of the purchase and a custodial or safekeeping receipt from a third party under a written bailment for hire contract, or is recorded as the owner of the security through the Federal Reserve Book-Entry System;

(2) *Financial institution-type repurchase transaction* means a repurchase transaction with a section 107(8) institution; and

(3) *Loan-type repurchase transaction* means any repurchase transaction that does not qualify as an investment-type or financial institution-type repurchase transaction.

Residual interest means the remainder cash flows from a CMO or REMIC transaction after payments due bondholders and trust administrative expenses have been satisfied.

Reverse repurchase transaction means a transaction whereby a federal credit union agrees to sell a security to a purchaser and to repurchase the same or any identical security from that purchaser at a future date and at a specified price.

Section 107(8) institution means an institution in which a federal credit union is authorized to make deposits pursuant to section 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(8)), i.e., an institution that is insured by the Federal Deposit Insurance Corporation or is a state bank, trust company or mutual savings bank operating in accordance with the laws of a state in which the federal credit union maintains a facility.

Security means any security, obligation, account, deposit, or other item authorized for investment by a federal credit union pursuant to section 107(7), 107(8), or 107(15)(B) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8), 1757(15)(B)), other than loans to members.

Senior management employee means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

Settlement date means the date originally agreed to by a federal credit union and a vendor for settlement of the purchase or sale of a security.

Short sale means the sale of a security not owned by the seller.

Standby commitment means a commitment to either buy or sell a security, on or before a future date, at a predetermined price. The seller of the commitment is the party receiving payment for assuming the risk associated with committing either to purchase a security in the future at a predetermined price, or to sell a security in the future at a predetermined price. The seller of the commitment is required to either accept delivery of a security (in the case of a commitment to buy) or make delivery of a security (in the case of a commitment to sell), in either case at the option of the buyer of the commitment.

Stripped Mortgage-Backed Securities (SMBS) means securities that represent unequal proportions of the cash flows of an underlying pool of mortgages. In their purest form, SMBS represent mortgage-backed securities (MBS) that have been converted into interest only (IO) securities, where holders receive 100 percent of the interest cash flows, and principal only (PO) securities, where holders receive 100 percent of the principal cash flows.

Trade date means the date a federal credit union originally agrees, whether orally or in writing, to enter into the purchase or sale of a security.

Yankee Dollar deposit means a deposit in a United States branch of foreign bank licensed to do business in the state in which it is located, or a deposit in a state-chartered, foreign controlled bank.

Zero coupon bond means a debt obligation that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon bond realizes the rate of return through the gradual appreciation of the security, which is redeemed at face value on a specified maturity date.

§ 703.3 Investment Policies.

The board of directors of each federal credit union shall establish written investment policies consistent with the applicable provisions of the Act, NCUA's regulations, and other applicable laws and regulations, and review them at least annually. At a minimum, the written policies shall address the following:

(a) Purposes and objectives of the credit union's investment activities, including a statement whether securities purchased are held for sale, investment, or trading purposes;

(b) Persons or committees to whom investment authority has been delegated and the extent of their authority;

(c) Limits on the amount of funds that may be committed to any particular investment or securities transaction;

(d) Maturity limits;

(e) Interest rate risk (as applicable);

(f) Credit risk (as applicable);

(g) Securities dealers/brokerage firms approved for use by the board of directors together with any limitations that the board has established with respect to the amount of funds that may be placed or invested with any of the approved broker/dealers (as applicable); and

(h) Safekeeping of securities, including a list of safekeeping facilities approved by the credit union's board of directors.

§ 703.4 Authorized activities.

(a) *General authority.* A federal credit union may contract for the purchase or sale of a security provided that:

(1) The delivery of the security is to be made within thirty (30) days from the trade date; and

(2) The price of the security at the time of purchase is the market price.

(b) *Cash forward agreements.* A federal credit union may enter into a cash forward agreement to purchase or sell a security, provided that:

(1) The period from the trade date to the settlement date does not exceed one hundred and twenty (120) days;

(2) If the credit union is the purchaser, it has written cash flow projections evidencing its ability to purchase the security;

(3) If the credit union is the seller, it owns the security on the trade date; and

(4) The cash forward agreement is settled on a cash basis at the settlement date.

(c) *Loans, shares and deposits—other financial institutions.* A federal credit union may invest in the following accounts of other financial institutions as specified in sections 107(7) and 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8)): Loans to nonmember credit unions in an aggregate amount not exceeding 25 percent of the lending credit union's unimpaired capital and surplus; shares, share certificates or share deposits of federally insured credit unions; shares or deposits of any central credit union specifically authorized by the board of directors; and deposits of any section 107(8) institution, provided that where any such deposit, or any portion of it, is not federally insured, a credit union shall analyze the credit quality of the issuing institution prior to making the deposit. Where the deposit, or any portion of it is not federally insured, a federal credit union shall also record its credit decision respecting the investment in the records of the credit union.

(d) *Repurchase transactions.* A federal credit union may enter into an investment-type repurchase transaction or a financial institution-type repurchase transaction provided the purchase price of the security obtained in the transaction is at or below the market price. A repurchase transaction not qualifying as either an investment-type or financial institution-type repurchase transaction will be considered a loan-type repurchase transaction subject to section 107 of the Federal Credit Union Act (12 U.S.C. 1757), which generally limits federal credit unions to making loans only to members.

(e) *Reverse repurchase transactions.* A federal credit union may enter into a reverse repurchase transaction, provided that either any securities purchased with the funds obtained from the transaction or the securities collateralizing the transaction have a maturity date not later than the settlement date for the reverse repurchase transaction. A reverse repurchase transaction is a borrowing transaction subject to section 107(9) of the Federal Credit Union Act (12 U.S.C. 1757(9)), which limits a federal credit union's aggregate borrowing to 50 percent of its unimpaired capital and surplus.

(f) *Federal funds.* A federal credit union may sell Federal funds to a section 107(8) institution, provided that the interest or other consideration received from the financial institution is at the market rate for Federal funds transaction and that the transaction has a maturity of 1 or more business days or the credit union is able to require repayment at any time.

(g) *Yankee Dollars.* A federal credit union may invest in Yankee Dollar deposits in a section 107(8) institution.

(h) *Eurodollars.* A federal credit union may invest in Eurodollar deposits in a branch of a section 107(8) institution.

(i) *Banker's acceptances.* A federal credit union may invest in banker's acceptances issued by a section 107(8) institution.

(j) *Mutual funds.* A federal credit union may invest in a mutual fund if the investments and investment transactions of the fund are legally permissible for federal credit unions under the Federal Credit Union Act and NCUA Rules and Regulations.

§ 703.5 Prohibited Activities.

The prohibitions contained in paragraphs (f), (g), (h) and (k) of this section shall not apply to securities purchased prior to the effective date of those prohibitions.

(a) Except as provided in § 701.21(i), a federal credit union may not purchase or sell a standby commitment.

(b) A federal credit union may not buy or sell a futures contract.

(c) A federal credit union may not engage in adjusted trading.

(d) A federal credit union may not engage in a short sale.

(e) A federal credit union may not purchase shares or deposits in, or otherwise transact business with a corporate credit union that does not operate in compliance with part 704 of this chapter in significant respects, or is not examined by NCUA.

(f) Except as provided in paragraph (i) of this section, a federal credit union may not purchase a Stripped Mortgage-Backed Security (SMBS).

(g) Except as provided in paragraph (i) of this section, a federal credit union may not invest in a CMO or REMIC tranche whose average life would extend or is shortened by more than 6 years under modeling scenarios where mortgage commitment rates immediately rise or fall 300 basis points. The average life standard contained in this subsection shall apply to the investment at the time of purchase and on any subsequent review dates, assuming market interest rates and prepayment speeds at the time the standard is applied.

(h) Except as provided in paragraph (i) of this section, a federal credit union may not purchase a residual interest in a CMO or REMIC transaction.

(i) The prohibitions contained in paragraphs (f), (g) and (h) of this section shall not apply where an investment is made solely to reduce interest rate risk and where:

(1) A monitoring and reporting system is in place that provides the documentation necessary to evaluate the expected and actual performance of the investment under different interest rate scenarios;

(2) The monitoring and reporting system is used to conduct and document an analysis that shows, prior to purchase, that the proposed investment will reduce the credit union's interest rate risk;

(3) The investment, subsequent to purchase, is evaluated at least quarterly, to determine whether or not the investment has actually reduced the credit union's interest rate risk;

(4) The investment is reported as a trading asset at market value or as a held-for-sale asset at the lower of cost or market value until its disposition.

(j) The average life standard contained in paragraph (g) of this section shall not apply to a floating or

adjustable rate CMO/REMIC tranche that has all of the following characteristics, irrespective of whether or not it has been purchased to reduce interest rate risk:

(1) The interest rate is reset at least annually.

(2) The maximum allowable interest rate on the instrument is at least 300 basis points above the interest rate of the instrument at the time of purchase.

(3) The interest rate of the instrument varies directly (not inversely) with the index upon which it is based and is not reset as a multiple of the change in the related index.

(k) A federal credit union may not purchase a zero coupon security with a maturity date that is more than 10 years from the settlement date for purchase of the security.

(l) A federal credit union's directors, officials, committee members and senior management employees, and immediate family members of such individuals, may not receive pecuniary consideration in connection with the making of an investment or deposit by the federal credit union. The prohibition contained in this subsection also applies to any employee not otherwise covered if the employee is directly involved in investments or deposits unless the board of directors determines that the employee's involvement does not present a conflict of interest.

(m) All transactions with business associates or family members not specifically prohibited by paragraph (l) of this section must be conducted at arm's length and in the interest of the credit union.

[FR Doc. 91-25926 Filed 10-30-91; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-ANM-1]

Establishment of Transition Area, Anaconda, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the legal description of a final rule concerning establishment of a transition area at Anaconda, Montana that was published in the **Federal Register** on September 23, 1991 (56 FR 47903), Airspace Docket No. 91-ANM-1.

EFFECTIVE DATE: October 31, 1991.

FOR FURTHER INFORMATION CONTACT: James E. Riley, ANM-537, Federal Aviation Administration, Docket No. 91-ANM-1, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2537.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 91-22802, Airspace docket No. 91-ANM-1, published on September 23, 1991 (56 FR 47903), established a 700-foot Transition Area at Anaconda, Montana. An error was discovered in the legal description of the 700-foot Transition Area. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Anaconda, Montana 700-foot Transition Area, as published in the **Federal Register** on September 23, 1991 (56 FR 47903), FR Doc. 91-22802, page 47904, column 1 is corrected as follows:

§ 71.181 [Corrected]

2. Anaconda, Montana 700-foot Transition Area [new] [Corrected]

By removing "Starting at-" and substituting "That airspace extending upward from 700 feet above the surface beginning at-".

Issued in Seattle, Washington, on October 15, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91-26233 Filed 10-30-91; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 91-89]

Addition of Bahrain to the List of Nations Entitled to Special Tonnage Tax Exemption

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to information provided by the Department of State, the Customs Service has found that Bahrain does not impose discriminating duties of tonnage or imposts upon vessels belonging to citizens of the United States, and that, accordingly, vessels of Bahrain are exempt from special tonnage taxes and light money in ports of the United States. This document amends the Customs Regulations by adding Bahrain to the list of nations whose vessels are exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

EFFECTIVE DATE: The reciprocal privileges for vessels registered in Bahrain became effective on June 4, 1991. This amendment is effective October 31, 1991.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Whalen, Carrier Rulings Branch (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, called "light money", on all foreign vessels which enter United States ports (46 U.S.C. app. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of satisfactory proof that no discriminatory duties of tonnage or impost are imposed by that foreign nation on U.S. vessels or their cargoes (46 U.S.C. app. 141).

Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been found to be exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money. The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Finding

On the basis of the information received from the Department of State regarding the absence of discriminatory duties of tonnage or impost imposed on U.S. vessels in the ports of Bahrain, the Customs Service has determined that vessels of Bahrain are exempt from the payment of the special tonnage tax and light money, effective June 4, 1991, and that the Customs Regulations should be amended accordingly.

Inapplicability of Public Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act and Executive Order 12291

Because this amendment merely implements a statutory requirement and confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary; further, for the same reasons, good cause exists for dispensing with a delayed effective date

under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "major rule" as defined in E.O. 12291 and, accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspections, Cargo vessels, Maritime carriers, Vessels.

Amendment to the Regulations

Accordingly, part 4, Customs Regulations (19 CFR part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3.

* * * * *

Section 4.22 also issued under 46 U.S.C. app 121, 128, 141.

* * * * *

§ 4.22 [Amended]

2. Section 4.22 is amended by inserting "Bahrain" in appropriate alphabetical order.

Dated: October 25, 1991.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 91-26210 Filed 10-30-91; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[T.D. 8372]

RIN 1545-AJ90

Denial of Foreign Tax Credits for Government Provided Subsidies

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to denial of foreign tax credits for subsidies provided by foreign governments through the use of taxing systems. These regulations implement the Tax Reform Act of 1986. These final regulations provide guidance needed to comply with these changes and affect taxpayers that pay or accrue foreign income taxes.

EFFECTIVE DATE: These rules are effective for amounts paid or accrued in taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Carol E. Murphy of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL-942-86) (202) 566-6795, not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1988, the Internal Revenue Service published in the **Federal Register** (53 FR 45942) proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 901(i) of the Internal Revenue Code. Those amendments were proposed to conform the regulations to section 1204 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085, 2532). Written comments responding to the notice of proposed rulemaking were received. No public hearing was requested or held. After consideration of all comments regarding the proposed regulations, these regulations are adopted by this Treasury Decision with revisions in response to those comments. The comments and revisions are discussed below.

Explanation of Provisions

Section 901(i) was added to the Code to deny foreign tax credits where the amount paid or accrued (and designated as a "tax" by the foreign government) is used to provide a subsidy. The final regulations clarify the circumstances under which the foreign tax credit is denied for such amounts.

Under the final regulations, the amount of the tax is treated as a subsidy and not as an amount of tax paid or accrued if the amount is used, directly or indirectly, by the foreign country imposing the tax to provide a subsidy to the taxpayer, to a related person (within the meaning of section 482), to any party to the transaction, or to any party to a related transaction. The subsidy may be provided by any means but must be determined, directly or indirectly, by reference to the amount of the tax or to the base used to compute the amount of the tax.

The final regulations state that the method of providing a subsidy may include, but is not limited to, a rebate, a refund, a credit, a deduction, a payment, a discharge of an obligation, or any other method. The term "subsidy" is defined to include any benefit conferred, directly or indirectly, by a foreign country. Examples are provided that describe specific circumstances which give rise to a subsidy as contemplated by the regulations.

A comment was received which stated that there should be consistent treatment of entities that are treated as part of the government for purposes of section 901(a) of the Code (specifically the granting of a specific economic benefit under § 1.901-2(a)(2)(ii)(B)) and the treatment of that entity under section 901(i). Existing treatment under the two sections is not inconsistent because each is concerned with separate considerations. Whether a specific economic benefit has been provided depends upon whether the government has used its power to provide economic benefits within its control which are not made generally available to its taxpayers. Under § 1.901-2(a)(2)(ii), an entity may be treated as a part of the government where the entity acting as the government provides a specific economic benefit to the taxpayer. Under § 1.901-2(e)(3), however, an entity may be treated as separate from the government where the entity derives a subsidy directly from the government. Thus, account must be taken of the relationship between the entity and the taxpayer, and the circumstances under which the benefit is being conferred. To conclude otherwise would directly contravene the purpose of section 901(i).

Special treatment for government (or government-owned) entities also was rejected because it would create the potential for a credit to be claimed for a tax nominally paid by or on behalf of a U.S. person when the substance of the transaction with a government entity was to grant a tax holiday to the U.S. taxpayer. This is especially true in the case of a transaction with a government entity that pays taxes: where a tax holiday for the U.S. taxpayer is intended, the government entity could simply assume a tax liability that was nominally borne by the U.S. person and receive a tax credit against its own liability in the amount of the tax nominally paid on the U.S. person's behalf. Where a foreign company has *de minimis* private ownership, or where a foreign country undertakes a

privatization program, the problems presented by the government entity cases would be exacerbated.

This regulation, therefore, denies a foreign tax credit for the amount of an indirect subsidy provided to a taxpayer through the provision of a direct subsidy by the government to any person (governmental or not) with which it deals or which is a party to a related transaction. Examples 4 and 5 have been added, therefore, to clarify the treatment, under these regulations, of dual capacity taxpayers under § 1.901–2(a)(2)(ii) that deal with governmental agencies and when they will be treated as receiving indirect subsidies from such agencies. This clarification provides appropriate consistency with Example 3 of § 1.901–2(f)(2) which provides that even though a government assumes a taxpayer's liability for tax otherwise due under a generally applicable income tax, that taxpayer may nevertheless be entitled to claim a foreign tax credit for those amounts if all other tests are satisfied. If such consistency was not provided in § 1.901–2(e)(3), it would be possible for a government-owned enterprise to pay a tax on a taxpayer's behalf but not to receive a subsidy on a taxpayer's behalf. This would create the unwarranted result of granting a foreign tax credit even where a foreign government has effectively granted a tax holiday to specific taxpayers as described above.

A comment was received which stated that a taxpayer should be allowed the opportunity to avoid subsidy treatment by establishing that it did not, on the basis of all the facts and circumstances, receive a benefit from the subsidy. This comment is inconsistent with the express language of section 901(i), and the Service, consequently, has rejected it.

Under the final regulations, the use of an official exchange rate under certain circumstances would not be a subsidy determined, directly or indirectly, by reference to the amount of the tax, or to the base used to compute the amount of tax. Rev. Rul. 84–143, 1984–2 C.B. 127, held that the use of the official exchange rate of the Mexican Exchange Control Decree, effective December 20, 1982, is not a subsidy under prior law. The official exchange rate rule in the final regulations adopts the holding of Rev. Rul. 84–143. The fact pattern of Rev. Rul. 84–143 is addressed in Example 3.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Carol E. Murphy of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR §§ 1.901–1 through 1.907(f)–1A

Income taxes, Reporting and recordkeeping requirements, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * *

Par. 2. Section 1.901–2(e)(3) is revised to read as follows:

§ 1.901–2 Income, war profits, or excess profits tax paid or accrued.

* * * * *

(e) * * *

(3) *Subsidies*—(i) *General rule.* An amount of foreign income tax is not an amount of income tax paid or accrued by a taxpayer to a foreign country to the extent that—

(A) The amount is used, directly or indirectly, by the foreign country imposing the tax to provide a subsidy by any means (including, but not limited to, a rebate, a refund, a credit, a deduction, a payment, a discharge of an obligation, or any other method) to the taxpayer, to a related person (within the meaning of section 482), to any party to the transaction, or to any party to a related transaction; and

(B) The subsidy is determined, directly or indirectly, by reference to the amount of the tax or by reference to the base used to compute the amount of the tax.

(ii) *Subsidy.* The term "subsidy" includes any benefit conferred, directly or indirectly, by a foreign country to one of the parties enumerated in paragraph (e)(3)(i)(A) of this section. Substance and not form shall govern in determining whether a subsidy exists. The fact that the U.S. taxpayer may derive no demonstrable benefit from the subsidy is irrelevant in determining whether a subsidy exists.

(iii) *Official exchange rate.* A subsidy described in paragraph (e)(3)(i)(B) of this section does not include the actual use of an official foreign government exchange rate converting foreign currency into dollars where a free exchange rate also exists if—

(A) The economic benefit represented by the use of the official exchange rate is not targeted to or tied to transactions that give rise to a claim for a foreign tax credit;

(B) The economic benefit of the official exchange rate applies to a broad range of international transactions, in all cases based on the total payment to be made without regard to whether the payment is a return of principal, gross income, or net income, and without regard to whether it is subject to tax; and

(C) Any reduction in the overall cost of the transaction is merely coincidental to the broad structure and operation of the official exchange rate.

In regard to foreign taxes paid or accrued in taxable years beginning before January 1, 1987, to which the Mexican Exchange Control Decree, effective as of December 20, 1982, applies, see Rev. Rul. 84–143, 1984–2 C.B. 127.

(iv) *Examples.* The provisions of this paragraph (e)(3) may be illustrated by the following examples:

Example 1. (i) Country X imposes a 30 percent tax on nonresident lenders with respect to interest which the nonresident lenders receive from borrowers who are residents of Country X, and it is established that this tax is a tax in lieu of an income tax within the meaning of § 1.903–1(a). Country X provides the nonresident lenders with receipts upon their payment of the 30 percent tax. Country X remits to resident borrowers an incentive payment for engaging in foreign loans, which payment is an amount equal to 20 percent of the interest paid to nonresident lenders.

(ii) Because the incentive payment is based on the interest paid, it is determined by reference to the base used to compute the tax that is imposed on the nonresident lender. The incentive payment is considered a subsidy under this paragraph (e)(3) since it is provided to a party (the borrower) to the transaction and is based on the amount of tax that is imposed on the lender with respect to the transaction. Therefore, two-thirds (20 percent/30 percent) of the amount withheld by the resident borrower from interest payments to the nonresidential lender is not

an amount of income tax paid or accrued for purposes of section 901(b).

Example 2. (i) A U.S. bank lends money to a development bank in Country X. The development bank relends the money to companies resident in Country X. A withholding tax is imposed by Country X on the U.S. bank with respect to the interest that the development bank pays to the U.S. bank, and appropriate receipts are provided. On the date that the tax is withheld, fifty percent of the tax is credited by Country X to an account of the development bank. Country X requires the development bank to transfer the amount credited to the borrowing companies.

(ii) The amount successively credited to the account of the development bank and then to the account of the borrowing companies is determined by reference to the amount of the tax and the tax base. Since the amount credited to the borrowing companies is a subsidy provided to a party (the borrowing companies) to a related transaction and is based on the amount of tax and the tax base, it is not an amount paid or accrued as an income tax for purposes of section 901(b).

Example 3. (i) A U.S. bank lends dollars to a Country X borrower. Country X imposes a withholding tax on the lender with respect to the interest. The tax is to be paid in Country X currency, although the interest is payable in dollars. Country X has a dual exchange rate system, comprised of a controlled official exchange rate and a free exchange rate. Priority transactions such as exports of merchandise, imports of merchandise, and payments of principal and interest on foreign currency loans payable abroad to foreign lenders are governed by the official exchange rate which yields more dollars per unit of Country X currency than the free exchange rate. The Country X borrower remits the net amount of dollar interest due to the U.S. bank (interest due less withholding tax), pays the tax withheld in Country X currency to the Country X government, and provides to the U.S. bank a receipt for payment of the Country X taxes.

(ii) The use of the official exchange rate by the U.S. bank to determine foreign taxes with respect to interest is not a subsidy described in paragraph (e)(3)(i)(B) of this section. The official exchange rate is not targeted to or tied to transactions that give rise to a claim for a foreign tax credit. The use of the official exchange rate applies to the interest paid and to the principal paid. Any benefit derived by the U.S. bank through the use of the official exchange rate is merely coincidental to the broad structure and operation of the official exchange rate.

Example 4. (i) B, a U.S. corporation, is engaged in the production of oil and gas in Country X pursuant to a production sharing agreement between B, Country X, and the state petroleum authority of Country X. The agreement is approved and enacted into law by the Legislature of Country X. Both B and the petroleum authority are subject to the Country X income tax. Each entity files an annual income tax return and pays, to the tax authority of Country X, the amount of income tax due on its annual income. B is a dual capacity taxpayer as defined in § 1.901-2(a)(2)(ii)(A). Country X has agreed to return to the petroleum authority one-half of the income taxes paid by B by allowing it a credit in calculating its own tax liability to Country X.

(ii) The petroleum authority is a party to a transaction with B and the amount returned by Country X to the petroleum authority is determined by reference to the amount of the tax imposed on B. Therefore, the amount returned is a subsidy as described in this paragraph (e)(3) and one-half the tax imposed on B is not an amount of income tax paid or accrued.

Example 5. Assume the same facts as in *Example 4*, except that the state petroleum authority of Country X does not receive amounts from Country X related to tax paid by B. Instead, the authority of Country X receives a general appropriation from Country X which is not calculated with reference to the amount of tax paid by B. The general appropriation is therefore not a subsidy described in this paragraph (e)(3).

(v) *Effective Date.* This paragraph (e)(3) shall apply to foreign taxes paid or accrued in taxable years beginning after December 31, 1986.

* * * * *

Fred T. Goldberg,

Commissioner of Internal Revenue.

Approved: September 10, 1991.

Michael J. Graetz,

Acting Assistant Secretary of the Treasury.

[FR Doc. 91-26290 Filed 10-30-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 518

Release of Information and Records From Army Files

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This rule amends 32 CFR part 518 (56 FR 48932, 26 September 1991). This revision incorporates Department of Defense (DOD) policies concerning processing requests for DOD records, determining pertinent terms, prompt action on Freedom of Information Act (FOIA) requests, qualification of records under rules of exemption, creation versus extraction of records from an existing database, which agencies outside DOD are subject to FOIA, and the relationships between the FOIA and the Privacy Act (PA).

EFFECTIVE DATE: October 31, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Angela Petrarca, HQDA(SAIS-PDC), Washington, DC 20310-0107, Telephone: (202) 697-0460.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Army amends 32 CFR part 518 which appeared in the **Federal Register** on 26 September 1991, 56 FR 48932. 32 CFR part 518 is derived from Army Regulation 25-55 which implements within the Department of the Army the provisions of Department of Defense Directives 5400.7-R and 5400.7 series, Department of Defense Freedom of Information Act Program (32 CFR part 286) pertaining to action on requests for release of departmental records under the Freedom of Information Act (5 U.S.C. 552). This rule is being published by the Department of the Army for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). All written comments received will be considered in making subsequent amendments or revisions to 32 CFR part 518. All publications and forms referenced in this part may be obtained from National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 518

Freedom of information.

32 CFR Part 518 is amended as follows:

PART 518—THE ARMY FREEDOM OF INFORMATION ACT PROGRAM

1. The authority for 32 CFR part 518 continues to read as follows:

Authority: 5 U.S.C. 551, 552, 552a, 5101-5108, 5110-5113, 5115, 5332-5334, 5341-42, 5504-5509, 7154; 10 U.S.C. 130, 1102, 2320-2321, 2328, 18 U.S.C. 798, 3500; 31 U.S.C. 3710; 35 U.S.C. 181-188; 42 U.S.C. 2162; 44 U.S.C. 33; and Executive Order 12600.

§ 518.5 [Amended]

2. Section 518.5 is amended by revising the word "This" to read "The" in the first sentence.

3. Section 518.10, paragraph (c) introductory text is amended in the second sentence by revising the word "rate" to read "rare"; and paragraph (e) is revised to read as follows:

§ 518.10 Agency record.

* * * * *

(e) If unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply and they need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the **Federal Register** also require no processing under the FOIA. Components should direct the requester to the appropriate source to obtain the record.

4. Section 518.21 introductory text is revised to read:

§ 518.21 Prompt action on requests.

When a member of the public complies with the procedures established in this part for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. When a Component has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt. However, this does not preclude a Component from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. A DoD Component may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the compliment processing the request.

* * * * *

5. Section 518.22, paragraph (b) is amended by revising the fourth sentence to read:

§ 518.22 Use of exemptions.

* * * * *

(b) * * * The excised copies shall reflect the denied information by means of Blackened areas, which are Sufficiently Blackened as to reveal no information. * * *

6. Section 518.24, paragraph (a) is amended by adding a new sentence at the end of the paragraph; and paragraph (b) is revised to read as follows:

§ 518.24 Creating a record.

(a) * * * Fee assessments shall be in accordance with subpart F of this part.

(b) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of record, programming, or particular format are questionable, components should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach.

* * * * *

7. In section 518.29, paragraph (e) is revised and paragraph (f) is added to read as follows:

§ 518.29 Relationship between the FOIA and the Privacy Act (PA).

* * * * *

(e) Requesters who seek access to agency records and who cite or imply the FOIA, will have their requests processed under the FOIA.

(f) Requesters should be advised in final responses why their request was processed under a particular Act.

8. Section 518.37, paragraph (d)(1) is revised to read as follows:

§ 518.37 FOIA exemptions.

* * * * *

(d) * * *

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. See Public Law 101–189, National Defense Authorization Act, November 1989, 103 Stat. 1352 (§ 518.1(k)).

* * * * *

9. On page 48944 in the issue of September 26, 1991, second column, the section heading "§ 418.50 Termination." is corrected to read "§ 518.50 Termination.".

10. In section 518.54, the introductory text is revised; paragraph (g)(1) is removed and paragraphs (g) (2) and (3) are redesignated as paragraphs (g) (1) and (2) to read as follows:

§ 518.54 Requests from private parties.

The provisions of the FOIA are reserved for persons with private interests as opposed to federal or foreign governments seeking official information. Requests from private persons will be made in writing, and will clearly show all other addresses within the Federal Government to whom the request was sent. This procedure will reduce processing time requirements, and ensure better inter and intra-agency coordination. Components are under no obligation to establish procedures to receive hand delivered requests. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in §§ 518.24 and 518.32. DA officials will release the following records, upon request, to the persons specified below, even though these records are exempt from release to the general public. The 10-day limit (§ 518.22) applies.

* * * * *

11. Section 518.60 is revised to read as follows:

§ 518.60 Denial tests.

To deny a requested record that is in the possession and control of a DoD Component, it must be determined that the record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in subpart C of this part.

12. Section 518.61 is revised to read as follows:

§ 518.61 Reasonably segregable portions.

Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not to reasonable to segregate portions of the records for release. The excised copies shall reflect the denied information by means of Blackened areas, which are Sufficiently Blackened as to reveal no information. The best means to ensure illegibility is to cut out the information from a copy of the document and reproduce the appropriate pages. If the document is classified, all classification markings shall be lined through with a single

black line, which still allows the marking to be read. The document shall then be stamped "Unclassified".

13. Section 518.85, paragraph (g)(3) is revised as follows:

§ 518.85 Fee assessment.

* * * * *

(g) * * *

(3) "Representative of the news media" does not include private libraries, private repositories of Government records, or middlemen, such as information vendors or data brokers.

* * * * *

§ 518.99 [Amended]

14. Section 518.99 is amended in paragraph (b)(2) introductory text, in the third sentence, by revising the word "Citea" to read "Cite" in paragraph (b)(3) introductory text, in the first sentence, by revising the word "Indentify" to read "Identify"; and in the third sentence of paragraph (c), by revising "acronymns" to read "acronyms".

15. Appendix E to part 518 is amended by adding a new component at the end of the appendix to read as follows:

Appendix E—DoD Freedom of Information Act Program Components

* * * * *

Defense Finance and Accounting Service

John O. Roach,

Army Liaison Officer with the Federal Register.

[FR Doc. 91-26059 Filed 10-30-91; 8:45 am]

BILLING CODE 3710-08-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 40 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the regulations implementing the Deceptive Mailings Prevention Act of 1990, have previously been published in the Federal Register.

EFFECTIVE DATE: September 15, 1991.

FOR FURTHER INFORMATION CONTACT: Catherine V. Pagano, (202) 268-2969.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 40, dated September 15, 1991. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal, previously described in interim or final rules published in the Federal Register.

Summary of Changes

Chapter 1

Section 122.33 and Exhibit 122.33 are corrected to show the wider area recommended for placement of addresses on all letter-size mail. Specific requirements apply to mail prepared for automation-based rates (see 520 through 550).

Exhibits 122.63a, 122.63c–i, 122.63l–s, and Exhibit 722.1 reflect changes in mail processing operations. Boldface type indicates these changes. (*Postal Bulletin* 21792, 6-27-91)

Exhibit 122.63m permits all automation-compatible mailpieces bearing a properly prepared ZIP+4 barcode in the address block to be eligible for the ZIP+4 Barcoded rates. This revision took effect June 16, 1991. (*Postal Bulletin* 21790, 5-30-91)

Sections 122.9, 324.41, 324.42, 325.3, 365.15, 530, 628.213, and 628.313 amend addressing requirements for automation-based rates. These amendments followed a review of issues on address quality, including use of apartment numbers and rural route box numbers; address standardization requirements; frequency of address file updates using Coding Accuracy Support System (CASS) certified software; CASS certification requirements for software users versus software vendors; and Form 3553, *Coding Accuracy Support System (CASS) Summary Report.* Because address elements such as apartment/suite numbers and rural and highway contract route box numbers may not always be available and because some business mailers may be prohibited from altering customer-provided mailing addresses, addressing requirements are modified to allow addresses that do not include this information to be used in mailings submitted at automation-based rates until at least September 1, 1993. Regulations requiring standardized addresses for mailings submitted at the numeric ZIP+4 code automation rate are modified to require use of standard addressing formats to enable matching to the current Postal Service ZIP+4 file when using CASS certified address matching software. The requirement to update address lists every 6 months with CASS certified software is changed to require that, effective September 1, 1991, all mailings must be produced from address lists that were ZIP+4 coded on or after March 1, 1991, using the current Postal Service ZIP+4 file; and, after meeting this requirement, all lists must be reprocessed using current CASS certified software at least once each year. In addition, the requirement for all users of CASS certified software to obtain individual CASS certification is changed to allow users of vendor-supplied software, which has current CASS certification, to continue to use that software without obtaining individual CASS certification until at least March 1, 1992. Form 3553 is revised, including modification to the requirements for documentation for use of single lists, multiple lists, and extracts of lists. These revisions took effect September 1, 1991. (*Postal Bulletin* 21795, 8-8-91)

* * * * *

Section 133.1 provides a customer an expedited oral decision after receiving an adverse classification decision from an acceptance post office. This revision took effect July 25, 1991. (*Postal Bulletin* 21794, 7-25-91)

Section 134.222 redefines in the note following 134.222b the geographic areas in which military personnel on active duty or hospitalized from active duty in those areas may use the free mailing privileges announced in *Postal Bulletin* 21779 (12-27-90). "Overseas areas" for the purpose of 134.222a include Bahrain, Egypt, Israel, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates; parts of Iraq (north of 36 degrees north latitude); parts of Turkey (east of 35 degrees east longitude and south of 40 degrees north latitude); and the adjacent waters of the Arabian Gulf, Arabian Sea (north of 10 degrees north latitude and west of 68 degrees east longitude), Gulf of Aden, Mediterranean Sea (east of 27 degrees east longitude), and Red Sea. For the purpose of 134.222b, "overseas areas" include those defined in 134.222a and Grenada, Lebanon, and Vietnam. This revision took effect June 10, 1991. (*Postal Bulletin* 21794, 7-25-91)

Sections 136.94, 465.11, 465.26, 465.72, 664.25, and 664.72 clarify that mailers may use Express Mail and Priority Mail drop shipment to transport second- and third-class drop shipments to

destination entry post offices where applicable entry discounts may be claimed. (*Postal Bulletin* 21795, 8–8–91)

Exhibit 137.251a adds to the list of federal agency authorization codes four new agencies: Administration for Children and Families; National Commission on American Indian, Alaska Native & Native Hawaiian Housing; National Commission on Responsibilities for Financing Postsecondary Education; and National Commission on Severely Distressed Public Housing. It also adds two more branches of the Department of Labor: Bureau of International Labor Affairs and National Commission for Employment Policy. In addition, two agencies have been combined under a different name, and one agency has contracted to use a larger agency's permit numbers. The list reflects other additions, changes, and deletions of several business reply mail permits and sampling numbers (RPW). Boldface type indicates these changes. Exhibit 137.251a was previously not identified with an independent number, references having been cited by section 137.252. Citations to the exhibit now refer to the exhibit by name and number throughout the manual. Sections 137.251a, 137.252, 137.263b(2), 137.272a(1), 137.272b(1), 137.274a(1), 137.276g(2), 137.276g(3), 137.276h(3), and 137.285 are thus revised to reflect this change.

Section 149.22 clarifies the number of days a customer must wait before filing a loss claim for COD, insured, and registered articles.

Section 149.282 prescribes quarterly reviews of postal claims units performed by the manager, mailing requirements, or the consumer affairs representative assigned to that duty. This review detects the existence of delinquent forms and other irregularities in the handling of accountable mail and the processing of claims and inquiries. This new section also provides a process to develop an action plan for correcting irregularities. Former sections 149.282 and 149.283 are redesignated as 149.283 and 149.284, respectively (*Postal Bulletin* 21792, 6–27–91)

Sections 149.311 and 149.411 clarify instructions for registered COD mail claims filed by postal customers.

Section 153.191 notes that customers requesting to have their mail held can initiate this action by signing Form 8076, *Authorization to Hold Mail.*

Section 153.82. changes the optional endorsement for uninsured parcels from "Carrier Release" to "Carrier—Leave If No Response." (*Postal Bulletin* 21793, 7–11–91)

Chapter 2

No changes were made to Chapter 2.

Chapter 3

Sections 324.41, 324.42, 325.3, and 365.15 amend addressing requirements for automation-based rates (see description of changes under Chapter 1, section 122.9).

Sections 324.71, 325.112c, 424.543c, 424.643d, 551.251, 562.1, 563.1, and 628.142e permit all automation-compatible mailpieces bearing a properly prepared ZIP+4 barcode in the address block to be eligible for the ZIP+4 Barcoded rates. These revisions took effect June 16, 1991. (*Postal Bulletin* 21790, 5–30–91)

Chapter 4

Section 424.413 clarifies that second-class mailers may deposit mail only in accordance with the approved distribution plan for a publication at its authorized entry offices. (*Postal Bulletin* 21795, 8–8–91)

Sections 424.453, 445.242, 445.243, 624.743, 644.142, 644.143, and 664.264 clarify that second-class delivery office rate mail and third-class destination delivery unit rate mail must be separated from other destination rate mail in the same mailing or other mailings at the time of verification and deposit for acceptance. (*Postal Bulletin* 21795, 8–8–91)

Sections 424.712, 424.713, 424.714, and 424.716 are deleted because the information about mail entered at any second-class presort rate is found in other sections of the *Domestic Mail Manual.* (*Postal Bulletin* 21795, 8–8–91)

Section 426.75, referring to walk-sequence rates, is deleted because this section pertains to the availability of the destination entry rates for second-class publications deposited at airport mail facilities (AMFs) that are presort rather than destination rates. (*Postal Bulletin* 21795, 8–8–91)

Section 429.22 recommends, but no longer requires, that copies of second-class publications with authorized attachments be mailed under cover. (*Postal Bulletin* 21794, 7–25–91)

Sections 465.1, 465.2, 465.3, 624.716, 664.1, 664.2, 664.3, 722.431, 784.1, 784.2, and 784.3 are modified to specify that second-, third-, and fourth-class plant-verified drop shipments may be verified and cleared for dispatch either by postal personnel staffing a detached mail unit (DMU) at a mailer's plant or by postal personnel at the bulk mail acceptance unit (BMAU) at the origin post office serving the mailer's plant or another post office as designated by the field division general manager/postmaster serving the mailer's plant. A plant-verified drop shipment postage payment system using either DMU or BMAU verification must be approved by the field division general manager/postmaster serving the mailer's plant. (*Postal Bulletin* 21795, 8–8–91)

Section 465.11 and 784.11 amend the definitions of the second- and fourth-class plant-verified drop shipment postage payment systems to clarify that all second- and fourth-class zone-rated mail (parcel post and bound printed matter) may be entered under this system. (*Postal Bulletin* 21795, 8–8–91)

Sections 465.15, 664.15 and 784.15 clarify that the date on a mailing statement and on Form 8125, *Drop Shipment Clearance Document,* does not necessarily represent the date that a plant-verified drop shipment mailing is accepted as mail into the postal processing mailstream at the entry post office. (*Postal Bulletin* 21795, 8–8–91)

Sections 465.28, 664.27 and 784.27 require mailers to provide the post office that verifies drop shipments at a detached mail unit or a bulk mail acceptance unit with the schedule of plant-verified drop shipments that are presented for verification and clearance for dispatch each week or on a schedule approved by the administering post office. (*Postal Bulletin* 21795, 8–8–91)

Chapter 5

Sections 521.3 notes in an exception comment that at the time Domestic Mail Manual Issue 40 went to press, the Postal Service had circulated for public notice and comment a proposed rule in the **Federal Register** with a proposed effective date of September 15, 1991, to make the 3.0-ounce maximum for mail within ZIP+4 Barcoded rate mailings permanent. Under the proposed rule the maximum weight for ZIP+4 rate mailings would be 2.5 ounces. Check the *Postal Bulletin* and the **Federal Register** for a final rule and effective date. Until the final rule becomes effective, the Postal Service will accept mail at both the ZIP+4 and ZIP+4 Barcoded rates that weighs up to 3.0 ounces.

Section 530 amends addressing requirements for automation-based rates (see description of changes under Chapter 1, section 122.9).

Sections 551.23, 551.5, 551.73, 552.1, and 552.32 change requirements governing the acceptable location of ZIP+4 barcodes and delivery point barcodes printed on inserts to appear through envelopes with windows in the lower right corner. This change permits the lower right barcode printed on an insert to be positioned anywhere within the barcode clear zone (instead of the

previously required barcode read area) as long as a minimum clear space is maintained. Also the maximum baseline shift requirement in section 551.5 is relaxed to 0.015 inch for both address block barcodes and barcodes in the lower right corner. (*Postal Bulletin* 21795, 8–8–91)

Section 551.252 clarifies the four permitted locations in the address block for the ZIP+4 barcode or delivery point barcode. The barcode must be placed in one of these four locations: (1) above the top printed line of the address (the preferred location); (2) below the city, state, and ZIP Code line; (3) above the name of the recipient, but below the optional endorsement line; or (4) above or below keyline information.

Section 551.42 notes that at the time Domestic Mail Manual Issue 40 went to press, the Postal Service had circulated for public notice and comment a proposed rule changing this regulation to require a print reflectance difference (PRD) of at least 30% rather than a print contrast ratio of at least 30%. The PRD equals the reflectance of the background minus the reflectance of the ink, multiplied by 100. The proposed effective date for this change was September 15, 1991. Check the *Postal Bulletin* and the *Federal Register* for a final rule and effective date. In the interim, mail meeting either minimum standard is acceptable.

Chapter 6

Section 624.714 clarifies that pieces claimed at different destination entry rates may be included in a single mailing and reported on the same mailing statement under specific conditions. (*Postal Bulletin* 21795, 8–8–91)

Sections 624.716 and 722.431 are amended to require that mailings must be verified at the origin detached mail unit or bulk mail acceptance unit under a plant-verified drop shipment postage payment system or at the destination entry post office. (*Postal Bulletin* 21795, 8–8–91)

Sections 624.716e and 722.413d add exceptions to clarify that the temporary suspension of the requirement for affixing a USPS seal, lock, or other security device to a mailer's vehicle, applies to shipments verified at a post office bulk mail acceptance unit as well as to mailings verified at a detached mail unit in a mailer's plant under an authorized plant-verified drop shipment postage payment system. The mailings are then transported by the mailer to another postal facility for deposit and acceptance at destination rates. (*Postal Bulletin* 21795, 8–8–91)

Sections 628.213, 628.312, and 628.313 amend addressing requirements for automation-based rates (see description of changes under Chapter 1, section 122.9).

Sections 644.142 and 767.532e add notes to clarify that BMC pallets may contain pieces that are eligible for the DBMC rate and pieces that are ineligible for the DBMC rate that are for the ASF ZIP Code ranges served by the BMC as shown in Exhibit 122.63h. (*Postal Bulletin* 21795, 8–8–91)

Section 661.221 clarifies that pound-rate postage charges, including postage for third-class carrier route presort mail, include a per-piece charge. (*Postal Bulletin* 21795, 8–8–91)

Chapter 7

Sections 712.3, 743, 784.12, and 784.24 clarify the payment of the destination bulk mail center rate mailing fee must be made to the origin post office staffing a detached mail unit or origin post office bulk mail acceptance unit for mailings verified and paid for under a plant-verified drop shipment postage payment system. No permits or fees are required at the destination entry post offices where plant-verified drop shipments are deposited for acceptance. (*Postal Bulletin* 21795, 8–8–91)

Sections 722.411 and 722.414 define a fourth-class destination bulk mail center (DBMC) entry rate mailing as any parcel post mailing that includes pieces eligible for and claimed at the DBMC entry rate. (*Postal Bulletin* 21795, 8–8–91)

Chapter 8 (Reserved)

Chapter 9

Section 912.8b corrects a typographical error of $5 to show the $6 fee charged a customer who sends a written request to a post office of address for a copy of a delivery record. Section 934.84 correctly showed in Domestic Mail Manual Issue 38 the $6 fee, which had been raised from $5 with the implementation of new postage rates and fees on February 3, 1991.

Section 951.21 clarifies the permitted payment periods for Group 2 post office box fees. Group 2 fees for box sizes 3, 4, and 5 are for a semiannual (6-month) period. One or two periods may be paid at the same time for these sizes. Group 2 fees for box sizes 1 and 2 are for an annual period and may be paid for one period only.

List of Subjects in 39 CFR part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	FEDERAL REGISTER publication
40	September 15, 1991.	56 FR [insert FR page number]

Stanley F. Mires,

Assistant General Counsel Legislative Division.

[FR Doc. 91– 26196 Filed 10–30–91; 8:45 am]

BILLING CODE 7710-12-M

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 39 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the regulations implementing the Drug and Household Substance Mailing Act of 1990, have previously been published in the **Federal Register**.

EFFECTIVE DATE: June 16, 1991.

FOR FURTHER INFORMATION CONTACT: Catherine V. Pagano, (202) 268–2969.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 39, dated June 16, 1991. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal for issue 39 covers the minor changes not previously described in interim or final rules published in the **Federal Register.**

Summary of Changes

Chapter 1

Sections 122.411, 424.73a, 424.73c, 424.732 424.743, 624.83a, 624.83c, and 624.843 allow pieces mailed to rural or highway contract routes bearing full addresses or occupant or exceptional forms of address to qualify for second-class 125-piece walk-sequence discounts, and for second- and third-class saturation walk-sequence discounts. The requirement of 125 pieces per route (see 424.742), or the 90% of active residential or 75% of active possible address coverage requirements (see 424.743 and 624.843), as well as all other requirements for the walk-sequence rates, must be met for rural and highway contract route pieces bearing other than the simplified address format. Mailers who elect to use the simplified address format must meet the criteria in 122.41, including the requirement to present a sufficient number of pieces to cover each family or boxholder on each route to which pieces are sent. These amendments took effect April 4, 1991. (*Postal Bulletin* 21786, 4–4–91).

Section 122.441 describes the availability of delivery address information for all carrier routes, general delivery units, and post office box sections. This information, formerly available in the Carrier Route Information System (CRIS), is now contained in the Delivery Statistics File. (*Postal Bulletin* 21785, 3–21–91).

Exhibits 122.63a through 122.63r reflect changes in mail processing operations. Boldface type indicates those changes. (*Postal Bulletin* 21785, 3–21–91).

Exhibit 122.63m and sections 324.71, 325.112, 424.543, 424.643, 562.1, 563.1, and 628.142 are amended to permit ZIP+4 and ZIP+4 Barcoded rates for pieces with address block barcodes destined for any ZIP Code area marked with an asterisk in Exhibit 122.63m. The address block barcodes must meet the automation requirements in Chapter 5. Asterisks added to three-digit ZIP Code areas of Exhibit 122.63m indicate postal facilities equipped with wide area barcode readers. (*Postal Bulletin* 21787, 4–18–91).

Exhibit 122.63s is added. Titled "BMC/ASF Distribution Labeling List and Service Areas for Third- and Fourth-Class Destination Bulk Mail Center (DBMC) Rates," this exhibit supplements Exhibits 624.721 and 722.411. Exhibit 122.63s clarifies the preparation requirements for BMC (bulk mail center) and ASF (auxiliary service facility) sacks and pallets for mailers wishing to take advantage of the DBMC rates. (*Postal Bulletin* 21788, 5–2–91).

Section 123.44f, titled "Libelous Matter (18 USC 1718)," is deleted and 123.44g, 123.44h, and 123.44i are renumbered 123.44f, 123.44g, and 123.44h to incorporate statutory changes in section 1210(c) of Title XII of the *Crime Control Act of 1990* (Public Law No. 101–647, November 29, 1990) that took effect May 28, 1991. This Act repealed 18 USC 1718. (*Postal Bulletin* 21787, 4–18–91).

Section 124.364a adds anabolic steroids to substances regulated under the *Controlled Substances Act* (21 USC 801, *et seq.*) in accordance with the *Anabolic Steroids Control Act of 1990* (Public Law 101–647, Title 19). (*Postal Bulletin* 21783, 2–21–91)

Sections 124.366, 124.366a and 124.366c(2) are revised to conform to recent statutory changes. Section 124.366 reflects section 2401 of Title XXIV of the *Crime Control Act of 1990* (Public Law No. 101–647, November 29, 1990) that took effect May 28, 1991. This Act modified the "drug paraphernalia" statute underlying this revision. Sections 124.366a and 124.366c(2) conform to statutory changes in the *Anti-Drug Abuse Act of 1988* (Public Law No. 100–690, November 18, 1988). (*Postal Bulletin* 21787, 4–18–91)

Sections 124.366a and 124.366c(2) conform to statutory changes in the *Anti-Drug Abuse Act of 1988* (Public Law No. 100–690, November 18, 1988). (*Postal Bulletin* 21787, 4–18–91)

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Section 134.222 redefines in the note following 134.222b the geographic areas in which military personnel either on active duty or hospitalized for wounds or injuries received in combat may use the free mailing privileges announced in *Postal Bulletin* 21779 (12–27–90). "Overseas areas" for the purpose of 134.222a include all of Bahrain, Egypt, Israel, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates; parts of Turkey (east of longitude 35 degrees east and south of latitude 40 degrees north); and the adjacent waters of the Arabian Gulf, Arabian Sea (north of latitude 10 degrees north and west of longitude 68 degrees east), Gulf of Aden, Mediterranean Sea (east of longitude 27 degrees east), and Red Sea. For purposes of 134.222b, "overseas areas" include those defined for 134.222a and Grenada, Lebanon, and Vietnam. This revision took effect March 15, 1991. (*Postal Bulletin* 21788, 5–2–91)

Section 144.471 is revised to permit the deposit of dispatch prepared presort metered mailings after midnight without redating if authorized. Guidelines for local offices are found in Management Instruction DM–140–91–1. *First-Class Mail Acceptance Policy.* (*Postal Bulletin* 21790, 5–30–91)

Section 149.241 corrects the note at the end of the section to indicate that indemnity may be limited to $50 for COD mail if the mailer presents only the wrapper as evidence when filing a claim for loss.

Sections 153.213a and 153.213d clarify that commercial mail receiving agents (CMRAs) must submit each year their lists of clients and maintain duplicate Forms 1583, *Application for Delivery of Mail Through Agent.* (*Postal Bulletin* 21785, 3–21–91)

Section 159.51 and the corresponding table in 159.511 show that the service area of the New York Dead Letter Branch includes Puerto Rico and the Virgin Islands. This change took effect March 9, 1991, when the San Juan Dead Letter Branch serving Puerto Rico and the Virgin Islands ceased operations. Boldface type indicates the changes in the table. (*Postal Bulletin* 21785, 3–21–91)

Chapter 2

Minor editorial changes correct the misuse of the auxiliary verb "will," implied by context in most sections to mean the obligatory or contractual "shall." In sections where a regulation or procedure is required, the auxiliary verb "must" has been substituted for "will"; where a recurring action is cited, the simple present tense has been used.

Chapter 3

Section 364.151 clarifies that ZIP+4 barcoded pieces in packages trayed as prescribed in 364.154 and 364.155 qualify for the ZIP+4 Presort rate. (*Postal Bulletin* 21784, 3–7–91)

Chapter 4

Sections 424.72, 424.754a, 624.82, and 624.854a permit mailers to claim the second-class 125-piece and saturation walk-sequence rates provided in 411.142b and 411.142c. and the third-class saturation walk-sequence rates in 611.222a(3) for properly prepared carrier route packages that are part of a carrier route mailing and placed in carrier route or 5-digit carrier routes sacks and trays or placed on 5-digit, optional multicoded city, 3-digit, or SCF pallets. (*Postal Bulletin* 21787, 4–18–91)

Sections 424.753, 424.754, 424.763, 424.77, 424.78, 624.853, 624.854, 624.863, 624.87, 624.88, and 629.514 amend the requirements that mailers must meet to establish that mailings are eligible for the second- and third-class walk-sequence rates. Amended regulations both simplify and clarify the

documentation requirements that relate to package, sack, tray, and pallet labels; clarify the mailing statement annotation requirement relating to accuracy of sequencing; eliminate extra requirements for information with the first package to a route; and simplify the procedures that carriers must follow when improperly sequenced mail is received for their routes. (*Postal Bulletin* 21785, 3–21–91)

* * * * *

Section 425.53 clarifies that only postal employees may review circulation records in support of applications for second-class mail privileges. (*Postal Bulletin* 21784, 3–7–91)

Sections 465.24c, 465.431, 465.51, 664.24c, 664.431, 664.45, 664.51, 784.24c, 784.431, 784.45, and 784.51 clarify that Form 8125, *Drop Shipment Clearance Document,* is the required clearance document that accompanies plant-verified drop shipment mailings. In addition, the amendments to these sections note that vehicles may pick up mail from more than one authorized plant-verified drop ship mailer en route to destination postal facilities. (*Postal Bulletin* 21784, 3–7–91)

Chapter 5

Parts 551 and 552 revise the regulations and format requirements for use of delivery point barcodes and for the printing of ZIP+4 barcodes in address blocks. The 3-digit ZIP Code areas to which address block barcoded pieces may be sent at the ZIP+4 Barcoded rates are marked with asterisks in revised Exhibit 122.63m. New Exhibits 551.121, 551.122, 551.252, and 551.3 illustrate these revisions. (*Postal Bulletin* 21788, 5–2–91)

Chapter 6

Section 611.221 divides the new minimum per-piece rates for third-class mail into two major categories: "Letters" and "Other than Letters." To qualify for the "letters" category, mail must meet the letter-size dimensions prescribed in 127 and 128.2. Such mail is not required to meet the automation-compatibility requirements in Chapter 5 to qualify for these "letters" category rates unless mailed at ZIP+4 or ZIP+4 Barcoded rates. For purposes of determining whether the requirements for minimum size standards and the nonstandard surcharge are met and for purposes of qualifying for automation discounts, the length is the dimension of the piece that is parallel to the address. The position of the address, however, is not a factor for determining the mail processing category of the piece for sortation or its eligibility for bulk third-class "letters" category minimum per-piece rates when automation discounts are not claimed. Pieces not meeting the letter-size length, height, and thickness requirements in 128 must be paid at the "other than letters" minimum per-piece rates. This amendment took effect March 7, 1991. (*Postal Bulletin* 21784, 3–7–91)

Sections 623.64, 641.23, 644.3, 721.3, 765, 767.34, 767.63, and 767.64 allow mailers to combine third- and fourth-class machineable parcels in the same mailing if the parcels are presorted to the finest level. Sections 641.23 and 644.31 explain how mailers apply for authorization to combine third- and fourth-class machineable parcels. Section 644.174 is modified to prescribe that pallet and commingling mixed level rate mailing authorizations expire at the same time. The two authorizations may not exceed 2 years from the effective date of the pallet authorization. (*Postal Bulletin* 21786, 4–4–91)

Sections 624.721, 624.722, 641.222, 644.142e, 644.442e, 722.411, 722.412c, 767.32, and 767.532e clarify requirements for the Destination Bulk Mail Center (DBMC) rates and cite new Exhibit 122.63s. (*Postal Bulletin* 21788, 5–2–91)

Sections 664.12c, 664.431, 664.45, 664.51, 664.53, 784.12c, 784.431, 784.45, 784.51, and 784.53 suspend through September 30, 1991, the requirement for affixing a Postal Service seal (or equivalent security device) to vehicles containing plant-verified drop shipments and the requirement for recording the seal number on clearance documents. This suspension took effect April 4, 1991. (*Postal Bulletin* 21786, 4–4–91)

Chapter 7

Sections 722.411, 722.412, 722.413, 722.422, 722.431, 722.432, and 722.45 permit deposit of Destination Bulk Mail Center (DBMC) rate parcel post at designated sectional center facilities, subject to the applicable requirements in 722.4. These amendments took effect April 4, 1991. (*Postal Bulletin* 21786, 4–4–91)

Chapter 9

Section 914.21 clarifies in the footnote that for Express Mail COD shipments, the COD fee charged is determined by the amount to be collected. Express Mail is automatically covered by merchandise insurance up to $500. If the amount to be collected for an Express Mail COD shipment is between $500 and $600, the maximum COD fee of $7.00 must be paid.

Section 914.415 permits two return addresses on privately printed COD tags if mailers want undeliverable COD articles returned to one business address and COD payments for delivered articles sent to another. The tag must include a remittance coupon showing the address where payments are to be sent. The mailer's address where undeliverable articles are to be returned must appear on the other parts of the tag. (*Postal Bulletin* 21789, 5–16–91)

Section 951.31b permits partial refunds of annually paid post office box fees for Group 2 Box Sizes 1 and 2. If a postal customer discontinues service within the first 6 months of the annual payment period, the Postal Service refunds 50% of the annual fee. (*Postal Bulletin* 21786, 4–4–91)

Section 934.83 is added to clarify that mailers may file at any post office an inquiry for return receipt for merchandise on Form 1510, *Mail Loss/Rifling Report.* Previous section 934.83 is renumbered as 934.84.

Form Index

The updated index of forms shows identification number, title, and section where cited in the manual. As a matter of economy, form titles have been eliminated in the text of the manual.

Subject Index

The subject index appearing in this issue represents a complete revision of the previous index.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	FEDERAL REGISTER publication
39	June 16, 1991	56 FR [insert FR page number].

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91–26197 Filed 10–30–91; 8:45 am]

BILLING CODE 7710–12–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-3; Notice 4]

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: On October 8, 1991, NHTSA published in the **Federal Register** a final rule that amended requirements for the performance of trailer pneumatic brake systems in the event of pneumatic system failure. (56 FR 50666) It has come to the agency's attention that the docket number in the heading of that notice is incorrect. This notice corrects the docket number to read "[Docket No. 90-3, Notice 3]"; the October 8, 1991 notice had read "[Docket No. 90-3, Notice 2]." Because of the corrective nature and insignificant impact of this notice, NHTSA is making this amendment effective upon its publication.

EFFECTIVE DATE: This correction to the October 8, 1991 notice is effective October 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin L. Shaw, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2992).

Issued on: October 25, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-26225 Filed 10-30-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 910657-1244]

RIN 0648-AD58

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 4 to the Fishery Management Plan for the Snapper-Grouper fishery of the South Atlantic Region (FMP). This final rule (1) adds spadefish, lesser amberjack, and banded rudderfish to the management unit; (2) requires a Federal permit to harvest fish in the snapper-grouper fishery in the exclusive economic zone (EEZ) in excess bag limits, to fish for tilefish in the EEZ, or to use a sea bass trap in the EEZ; (3) requires reports of catch and/or effort from fishermen and dealers; (4) establishes minimum size limits for many of the species in the fishery; (5) requires fish in the snapper-grouper fishery to be off-loaded with head and fins intact, with a limited exception for greater amberjack; (6) establishes a presumption that a wreckfish possessed shoreward of the outer boundary of the EEZ was harvested from the EEZ; (7) requires that wreckfish be off-loaded only between 8 a.m. and 4:30 p.m. and that 24-hour notice be given of an off-loading; (8) prohibits the harvest of Nassau grouper in the EEZ; (9) limits the harvest of greater amberjack and mutton snapper during their spawning seasons; (10) prohibits the use of fish traps in the EEZ and the use of sea bass traps in the EEZ south of Cape Canaveral, Florida; (11) in the EEZ north of Cape Canaveral, limits the harvest by sea bass traps to sea basses plus bag-limit amounts for other species; (12) prohibits the use of entanglement nets (gillnets, trammel nets, etc.) in a directed fishery for fish in the snapper-grouper fishery; (13) prohibits bottom longlining for wreckfish in the EEZ; (14) prohibits the use of longlines for fish in the snapper-grouper fishery in the EEZ in water with a charted depth of less than 50 fathoms (91.5 meters); (15) establishes bag and possession limits for many species in the fishery; (16) removes Federal regulations for the Little River Reef special management zone (SMZ); (17) prohibits the use of powerheads within the SMZs off South Carolina; and (18) establishes a framework procedure for establishing or modifying certain management measures. The intended effects of this rule are to prevent overfishing of the snapper-grouper resource; rebuild species that are overfished; collect necessary data for management; provide for a flexible management system that minimizes regulatory delays and rapidly adapts to changes in resource abundance, new information, and changes in fishing patterns; reduce user conflicts; minimize habitat damage; and promote public comprehension of, voluntary compliance with, and enforcement of snapper-grouper management measures.

EFFECTIVE DATES: January 1, 1992, except that §§ 646.4 (b) and (d), 646.7(aa), and 646.22(g)(2) are effective October 25, 1991.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813-893-3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species are managed under the FMP prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The backgrounds and rationales for the measures in this final rule are contained in the proposed rule (56 FR 29922, July 1, 1991, corrected by 56 FR 32000 July 12, 1991) and in Amendment 4 to the FMP, the availability of which was announced in the **Federal Register** (56 FR 24773, May 31, 1991), and are not repeated here.

The prohibition of fish traps is a controversial issue. As demonstrated in Amendment 4, as well as in the responses contained in this final rule, the use of fish traps in this fishery presents unique problems which likely are not present in other fisheries. Most fisheries in which traps are used are crustacean fisheries, which target species such as blue crab, stone crab, and spiny lobster. Crustacean Fisheries in the southeast have not suffered from recruitment or growth overfishing. Conversely, most snappers and groupers have experienced growth and recruitment overfishing. Hence, a fundamental biological distinction exists between this and other southeast trap fisheries.

Of particular note is the concentrated use of fish taps in waters off the southern coast of Florida, which coincidentally is an area in which many species of this management unit suffer significant stress. Likewise, other fisheries probably face a less severe rebuilding task; thirteen species of this fishery have been documented as severely overfished, and an additional fourteen species are believed overfished. Some problems associated with the difficulties in enforcing fish trap regulations may be present in other fisheries. However, factors such as strong currents and storms are unique to the south Florida fish trap fishery.

Comments and Responses

Numerous comments on the proposed rule were received, primarily by those who either opposed or supported the prohibition on the use of fish traps. All comments are addressed below.

Prohibition of Fish Traps

Ten trap fishermen representing 13 families submitted the following comments:

Comment: (1) The prohibition of fish traps will put them out of business and cause them to lose their homes and life savings because fish trappers cannot use alternative gear in their fishing area to catch enough reef fish to make a living.

Response: The prohibition of fish traps will have an adverse economic impact upon some trap fishermen. However, most fish trap fishermen already fish in other fisheries, such as spiny lobster and stone crab; thus, loss of income from fish trap catches will be mitigated to the extent that trap fishermen can shift effort to these or alternative fisheries. Also, fish can be captured by alternative gear, such as hook and line.

Comment: (2) Fish trappers cannot easily move to alternative fisheries because there are too many fishermen already and some fisheries, such as spiny lobster, will not admit new fishermen if they have not previously participated in that fishery.

Response: Most, but not all, fish trappers have fished for spiny lobster and stone crab; hence, they can enter other fisheries. NMFS acknowledges that the alternatives are limited and that there likely will be short-term adverse economic impacts on some fish trap fishermen.

Comment: (3) Prohibition of fish traps will have a minimal impact upon the welfare of the resource because the total catch of trap fish is less than 10 percent of the commercial catch and even a smaller portion of the total catch. Also, fish that are not taken by fish traps will most likely be taken by alternative gear; hence, the resource will not benefit. In addition, major components of the trap catch, such a mutton snapper, doctorfish, parrotfish, squirrelfish, goatfish, and wrasses are not overfished; thus, the trap catch is not hurting them.

Response: NMFS believes that with the prohibition of fish traps, and with the other measures, the stocks, especially off south Florida, will be able to recover. Once the stocks have reached a higher level of abundance, the hook-and-line or other gear catch will become equivalent to or exceed the level of the former trap catch. The increased abundance of the resource will contribute to the rebuilding process.

Comment: (4) There is a demand for non-traditional fish, such as doctorfish, parrotfish, and squirrelfish, by ethnic minorities, who cannot afford traditional species, and non-traditional fishes are taken primarily by traps; hence, prohibition of fish traps will deny poor people access to fresh fish.

Response: Because non-traditional species are lumped into an "unclassified" fish category in fishery statistics, the supply and demand for non-traditional species is unknown, thus, NMFS cannot estimate the potential loss of non-traditional fish to consumers.

Comment: (5) Fish traps are already restricted to a narrow area south of Miami seaward of 100 feet. This restriction has eliminated the conflict with other user groups and minimizes damage to reef habitat because most reefs are located within 100 feet of water.

Response: The ban on fish traps will lessen the conflict among user groups in Florida and will eliminate any habitat damage caused by trap-related activities. Moreover, it will reduce the illegal placement of traps in waters shallower than 100 ft.

Comment: (6) The Council has no evidence that fish traps kill tropical fish, as alleged in Amendment 4.

Response: Because the data base is limited, the catch of tropical fish by fish traps cannot be quantified. However, several scientific articles document that tropical fish are taken by fish traps and the Council received public input that fish traps resulted in injury and death to tropical fish. The prohibition of traps will eliminate that source of mortality.

Comment: (7) The Council has not documented the size of fish recruited to different gear types, and, thus, cannot claim that traps take fish smaller than alternative gear, such as hook and line.

Response: NMFS agrees the Council cited no data to support the Council's contention that fish traps recruit fish smaller than alternative gear, such as hook and line; although, for the nature of the gear type, this is a reasonable conclusion. Notwithstanding the uncertainty of the effect of traps on smaller fish, adequate rationale for the measure exists independently of this point.

Comment: (8) The primary cause of decreased fish abundance in south Florida waters is pollution and excessive coastal development, not fish traps.

Response: NMFS agrees that pollution and coastal development pose a serious threat to south Florida fisheries and must be considered a major factor in the decline of at least some south Florida fisheries, but it does appear that fish traps are an impediment to recovery of overfished species. The prohibition of fish traps will facilitate recovery of overfished stocks.

Comment: (9) Information in the preamble to the proposed rule that fish traps are inexpensive and easily built is inaccurate; in fact, a fish trap is expensive (up to $175) and takes a day to build. Also, few traps are lost and ghost fishing is a minor problem. Further, the industry proposal requiring use of untreated jute for door fasteners would minimize the problem of ghost traps.

Response: NMFS acknowledges that the cost of fish traps varies. However, NMFS has determined that the estimate in the regulatory impact review (RIR) represents an accurate cost of the average trap. Because the data base is limited, the extent of lost traps and associated ghost fishing is not known; however, the best available information indicates trap loss varies from 20 to 100 percent annually. The prohibition will minimize ghost fishing. NMFS agrees that the use of jute fasteners would be an improvement, but concludes such a requirement is difficult to enforce. Enforcement of trap regulations is a problem in Federal waters, independent of enforcement problems extant in state waters. The problem arises in part because of the difficulty in locating and observing the gear. The problem is exacerbated by theft of marked traps, strong currents, and storms, all of which result in lost traps. Also, the fact that Florida cannot enforce its law to exclude fish traps from state waters as long as fish traps are allowed in the EEZ is a consideration.

Comment: (10) The Council is ignoring the consumers of trap caught fish (6,800 consumers sent letters to the Council opposing the ban of fish traps).

Response: The Council is not ignoring consumers of trap-caught fish and believes that despite the wishes of the consumers, the long-term benefits of prohibiting fish traps outweigh any short-term disadvantages.

Comment: (11) The Council failed to consider seriously the industry proposal to regulate the fish trap industry. Trappers are willing to accept more stringent management measures, such as limited access to the fishery, a limit on number of traps, and expulsion from the fishery if convicted of two major violations.

Response: The Council discussed the industry's proposal and, in fact, this was the basis of a motion debated during the Council meeting wherein a two-tiered management system would have been established with the industry proposal (or some modification) applying in the south Florida area and another type of

approach north of this area. The Council concluded that the problems associated with fish traps (e.g., non-selectivity by size and species, non-compliance with escape panels, enforcement problems, inability of mesh sizes to let 20-inch groupers escape, ghost fishing, habitat damage, inconsistency with Florida's coastal zone management plan, incidental harvest of ornamental fish) would continue even under the suggested modifications. The Council believes that the benefits of prohibiting fish traps outweigh the disadvantages; hence, the industry proposal was rejected. NMFS agrees with the Council position.

Comment: (12) Fish trappers provided the Council with two scientific reports that showed that traps were environmentally safe and efficient.

Response: The Council considered all available scientific information, including the reports provided by fish trappers, and concluded that the benefits of prohibiting fish traps outweigh the disadvantages.

Comment: (13) Survivability of released fish from traps is at least comparable and probably exceeds that of hook-caught fish.

Response: NMFS believes that the data base on survivability of released trap-caught fish as compared with hook-caught fish is too weak to draw definitive conclusions.

Comment: (14) Amendment 4 violates national standard 1 because optimum yield from the fishery will not be attained unless fish traps are used.

Response: Presently, optimum yield is not being obtained because of the overfished condition of the snapper-grouper stock. Prohibiting fish traps will help rebuild the stock while allowing an orderly utilization of the resource. Additional measures, such as bag limits, minimum size limits, and restrictions on catch during spawning periods, are also included in Amendment 4 to rebuild the resource and obtain optimum yield.

Comment: (15) Amendment 4 violates national standard 2 because the best available data either was not used or was interpreted incorrectly by the Council.

Response: The Council used the best available scientific data and NMFS believes that the Council's interpretation of the data supports the management measures proposed in Amendment 4; hence, this is consistent with national standard 2.

Comment: (16) Amendment 4 violates national standard 4 because fish traps are allowed in the Gulf; whereas, Amendment 4 will prohibit them in the south Atlantic states.

Response: National standard 4 prohibits discrimination between residents of different states. Since management measures in Amendment 4 apply equally to the residents of all states, this is consistent with national standard 4. The measure is an appropriate response to circumstances existing in the South Atlantic snapper-grouper fishery. Although this prohibition will not preserve the status quo, it will maximize the overall benefits to the fishery; thus, it is consistent with national standard 4.

Comment: (17) Amendment 4 violates national standard 5 because fish traps are efficient gear.

Response: National standard 5 promotes efficiency where practicable; however, efficiency is only one criterion when considering whether or not to permit use of gear. Moreover, because many traps are lost each year—reports indicate a 20 to 100 percent annual loss rate—the overall usefulness of traps may be less than believed because fish killed by ghost fishing are not available to consumers. Efficient gears have been prohibited in a number of fisheries when other factors, such as bycatch, excessive mortality of juveniles, and habitat damage, have been considered; hence, this is consistent with national standard 5.

Comment: (18) Fish trap enforcement is not a major problem. For example, three trappers were stopped 16 times in the past 3 years and were never given a citation. A report from the Florida Marine Patrol, submitted to a fish trapper, stated that there were no records of fish trap violations in that district (unknown district). Another fisherman stated that in a recent year only 0.007 percent of NMFS-reported fishery violations were due to fish traps; only 0.003 percent of Florida-reported fishery violations were due to fish traps. The trappers stated that they are honest and do not constitute a law enforcement problem. Fish trappers reported that at-sea law enforcement was a problem for all EEZ fisheries; thus, fish traps should not be singled out for special attention.

Response: The Council and NMFS believe that law enforcement is significantly hindered because of the inability to locate traps and to inspect their construction, as discussed above. Just because law enforcement cases are very low in a particular district, or overall in south Florida, is not indicative that violations are low. To document a violation, an enforcement officer must catch a fisherman pulling traps in a prohibited area or fishing with illegal gear. The chance of such encounters is limited.

Comment: One thousand six hundred twenty-six fish consumers signed form letters opposing the prohibition of fish traps because of concerns it would adversely affect the availability of fresh, locally caught fish and would cause the price of fish to rise. Also, they stated that they had a right to share the renewable fish resources of this country, and they did not want imported fish.

Response: While the prohibition of fish traps may result in some short-term reduction of availability of locally caught fish, it is likely that at least some of the fish formerly taken by fish traps will be taken by alternative gear. This will moderate the impact of prohibiting fish traps. In the longer term, recovery of these species will provide even greater local availability. Also, it is unlikely that the measure will cause the price of fish to increase substantially because the majority of fish consumed by Americans already is imported.

Comment: Two hundred twenty-eight individuals submitted identical form letters opposing the prohibition of the use of fish traps. The major points of the letter were: (1) There was no research or scientific information to support Amendment 4; thus, the amendment is in violation of national standard 2; (2) the prohibition of use of fish traps would eliminate the livelihood of commercial fishermen; (3) the impact of prohibiting fish traps would not benefit the resource because fish formerly taken by traps would be taken by alternative gear, such as hook and line; and (4) the regulatory impact review (RIR) does not answer the real problem that prohibition of fish traps will create for trap fishermen.

Response: NMFS concludes that the Council used the best available data, that the Council's interpretation of the data support the management measures proposed in Amendment 4, and, thus, Amendment 4 is consistent with national standard 2. NMFS agrees that the prohibition of use of fish traps will have a short-term adverse economic impact upon some trap fishermen. Loss of income to trap fishermen will be mitigated to the extent that trap fishermen can shift to alternative gear or other fisheries. The RIR addresses these impacts, stating that other gear probably will take some of the fish currently caught by fish traps and that additional management measures will assist in rebuilding stressed resources. The RIR also enumerates benefits of banning fish traps that include reducing law enforcement costs, minimizing habitat damage, minimizing ghost fishing by lost or abandoned traps, eliminating mortality and injuries to fish taken by traps, minimizing local depletion of

stocks in waters contiguous to heavily populated areas, and making state and Federal fishery regulations more consistent. Law enforcement problems are associated with fish traps, as is discussed above.

NMFS believes that the overall benefits of banning fish traps, especially the conservation effects and benefits associated with reduced enforcement costs to both Florida and the Federal government, outweigh the negative economic impacts on fishermen using fish traps.

Comment: The North Carolina Division of Marine Fisheries (NCDMF) opposes the ban on the use of fish traps because there is no evidence that fish traps created or will perpetuate overfishing. It stated that fish traps can be controlled through rules that establish mesh sizes, require escape panels, limit the number of traps, and require that traps be tended. The NCDMF stated that fish in fish traps are pulled slower than those taken by hook-and-line gear; hence, mortality of undersized fish taken by traps should be less than that experienced by hook-and-line gear. The NCDMF concluded that prohibition of fish traps may result in eliminating a fishing gear that is efficient, more selective, and has higher potential for survival of released fish.

Response: The Council and NMFS disagree with NCDMF and believe that the use of traps will perpetuate overfishing in this area. NMFS acknowledges that NCDMF makes some theoretically valid arguments. However, when a trap in under water, mesh sizes, escape panels, and number of traps are difficult to verify. Practically, NMFS concludes that it is extremely difficult to enforce fish trap regulations effectively and that this factor outweighs any possible benefits from continued use of fish traps.

Comment: Three commercial fishing organizations and one individual opposed the ban on fish traps. They stated that fish traps were already restricted to a narrow area, were selective in the fish they captured, captured only a minor share of the total reef fish catch, caught species that for the most part were not stressed, that fish caught and released from traps had a high survival rate, and that the prohibition of fish traps would deny fresh fish to consumers. Further, they stated that commercial fishermen had cooperated with Federal biologists to provide data on fish trapping and that the data base used to prohibit fish traps was very weak. They recommended that the Council adopt the industry plan for regulation of fish traps. Also, they stated that habitat degradation and chemical pollution caused by an expanding coastal population and excessive coastal development were depressing reef fish stocks; yet, commercial fish trappers were being blamed for everything.

Response: While the data base on fish traps is limited, as with many southeastern fisheries, the Council and NMFS believe, as discussed earlier, that the overall benefits of prohibiting the use of fish traps will outweigh the adverse economic impacts on fish trap fishermen. Habitat degradation and chemical pollution caused by expanding coastal population and coastal development are problems that cannot be addressed by fishery management measures.

Comment: The U.S. Fish and Wildlife Service, the Center for Marine Conservation, the Florida Marine Fisheries Commission (FMFC), thirty-eight individuals, six commercial fishermen, a charterboat association, seven sports fishing clubs, the Conservation Alliance of St. Lucie County, two state (Georgia and Florida) sports fishing organizations, one commercial fishing organization, and a charter vessel captain, all supported the prohibition of fish traps.

Response: NMFS concurs.

Restrictions on Use of Bottom Longlines

Comment: A vessel owner opposed the prohibition of use of bottom longline gear for snappers and groupers shoreward of the 50-fathom contour because longlines are an efficient gear and are not much different from a group of anglers on a headboat.

Response: The use of bottom longlines shoreward of the 50-fathom contour can result in habitat damage and conflict with other gear types, especially hook and line. NMFS believes that the benefits of reduced habitat damage and reduced conflict among user groups will outweigh the minor loss of efficiency associated with prohibition of the few longlines that are presently being used within 50 fathoms.

Comment: FMFC, two state (Georgia and Florida) sports fishing organizations, six sports fishing clubs, one individual, one charter boat captain, and one charter boat organization supported the prohibition of bottom longlines shoreward of 50 fathoms.

Response: NMFS concurs.

Entanglement Gear

Comment: FMFC, two state (Georgia and Florida) sports fishing organizations, six sports fishing clubs, and two individuals supported the prohibition of entanglement nets in the directed fishery for reef fish.

Response: NMFS concurs.

Size Limits

Comment: NCDMF did not support the commercial 12-inch minimum size limit for vermilion snapper because (1) the vermilion spawning stock ratio (SSR) is 28 percent—NCDMF believes that an SSR of 20 percent is adequate; and (2) the 12-inch minimum size limit will cause an immediate dramatic reduction in snapper landings in North Carolina. NCDMF also did not support the increase in size limits to 20 inches for red grouper and scamp because current stock assessment information indicates that both species are at or above 30 percent SSR and the increased size limit will result in SSRs exceeding 40 percent. The NCDMF recommended a 16-inch size limit for red grouper and scamp.

Response: The Council and NMFS believe that SSRs for reef fish should not be below 30 percent in order to prevent overfishing, which, by definition, occurs when a species has an SSR of less than 30 percent. Although there may be a slight loss of weight in North Carolina vermilion snapper commercial landings in 1992, the loss will be more than compensated for in future years because the yield-per-recruit will be substantially increased with the larger size limit. Also, because the price per pound of larger vermilion snapper exceeds that of smaller fish, fishermen will obtain more money for their catch. The impact on commercial fishermen in 1992 may be moderate because most commercial activity occurs in deeper water where most vermilion snapper exceed 12 inches in length. The Council chose a 20-inch size limit for red grouper in order to facilitate law enforcement and promote compliance with Florida's regulations. Since very few red grouper are caught in North Carolina, the impact of the red grouper size limit will be minimal. There may be a short-term impact on catches of scamp; however, the size limit will substantially increase the yield-per-recruit on scamp. Thus, any loss incurred in 1992 and 1993 will be more than compensated for in future years due to increased yield-per-recruit. Moreover, most scamp are taken in relatively deep water where most fish exceed 20 inches in length; thus, the size limit should have a minimal impact on commercial landings.

Comment: A Georgia sports fishing organization and an individual agreed with recreational size limits provided that commercial quotas are imposed.

Response: The Council and NMFS believe that the recommended size limits are necessary at this time either to rebuild overfished species or to prevent

future overfishing. The Council may impose commercial quotas in the future through the framework procedure should this prove necessary.

Comment: A Florida sports fishing organization supported most minimum size limits in Amendment 4, however, it recommended a 12-inch total length for recreational vermilion snapper, 13-inch total length for commercial vermilion and gray snapper, 12-inch fork length for gray triggerfish, 14-inch total length for mutton snapper; and 36-inch fork length for amberjack for all fishermen. A commercial fisherman also urged the Council to increase the size limit for mutton snapper to 14 inches.

Response: The Council rejected alternative recreational size limits for vermilion snapper, mutton snapper, gray triggerfish, and amberjack because the SSR for these species appears to be adequate. To the maximum extent possible, the Council is standardizing minimum size limits in order to promote compatibility with state regulations and compliance with regulations. If necessary in the future, the Council will address changes in size limits by using the framework procedure.

Comment: One member of the commercial fishing industry opposed the differential size limits between recreational and commercial fishermen. The individual stated that the differential size limit was biased against commercial fishermen.

Response: Many species in the snapper-grouper complex stratify by size and depth with larger fish being distributed further offshore. Also, many larger fish command higher prices than smaller fish. Commercial fishermen have the vessels and equipment to fish further offshore and the value of their catch is increased as fish size increases. Conversely, most recreational fishermen are ill-equipped to fish in deep water; hence, they tend to fish in nearshore waters where fish are smaller. The RIR shows that size limits tend to transfer fish from the recreational to the commercial sector, especially for red porgy, vermilion snapper, gag, scamp, and red snapper. NMFS believes that differential size limits for amberjack and vermilion snapper are justified for the above reasons.

Bag Limits

Comment: NCDMF contended that the ten-fish vermilion snapper bag limit will be unfair to North Carolina fishermen because vermilion snapper are the mainstay of both the commercial and recreational (headboat) fisheries.

Response: NMFS agrees with the Council that the ten-fish bag limit for vermilion snapper is adequate for recreational anglers. Commercial fishermen are required to obtain permits to exceed bag limits. With fairly restrictive size limits in place it will be considerably more difficult to catch ten fish. Further, available catch data indicate that most anglers in the region will be unable to catch ten fish; thus, the impact of the bag limit should be minimal.

Comment: A company that provides headboat services in the Florida Keys opposed including mutton snapper in the aggregate bag limit because mutton snapper are not stressed in the area where the company fishes.

Response: The Council received considerable public input that mutton snapper were under intensive fishing pressure that threatened the biological integrity of the resource. The Council and NMFS believe that a ten-fish aggregate bag limit for snappers is sufficient and necessary to prevent overfishing of mutton snapper. Also, available data indicate that few anglers in the region will be able to catch ten snappers; thus, the impact of the bag limit should be minimal.

Comment: Two state (Georgia and Florida) sports fishing organizations believed that bag limits should be linked to commercial quotas.

Response: NMFS agrees with the Council that commercial quotas are not necessary at this time. Commercial quotas may be imposed in the future through the framework procedure if necessary.

Framework Procedure

Comment: FMFC and NCDMF strongly supported the framework procedure.

Response: NMFS concurs.

Permit Requirements

Comment: Two state (Florida and Georgia) sports fishing organizations opposed the permitting requirements unless they are linked to establishment of commercial quotas.

Response: The Council and NMFS believe that commercial quotas are not necessary at this time. Commercial quotas may be imposed through the framework procedure if necessary.

Comment: A sports fishing club opposed the earned income requirement for permits.

Response: The Council and NMFS believe that an earned income requirement for a permit is necessary to ensure that only those fishermen that are primarily dependent on the fishery for a living are participating in the commercial fishery. Permits also will facilitate the establishment of a limited access regime for the snapper-grouper fishery should that be required.

Comment: FMFC supported permit requirements.

Response: NMFS concurs.

Addition of Species to the Management Unit

Comment: FMFC supported, with reservations, the addition of spadefish, lesser amberjack, and banded rudderfish to the management unit. FMFC emphasized that the addition of these species without Federal management measures should not be interpreted as inhibiting state regulations on the species.

Response: NMFS does not object to more stringent management measures provided that state regulations do not conflict with Federal regulations.

Spawning Restrictions

Comment: A Florida sports fishing organization recommended extending the amberjack spawning restriction to March and May in the future. Similarly, the organization recommended that the sale of mutton snapper be prohibited during the spawning restriction period for mutton snapper.

Response: NMFS shares the commenter's concern that allowance of sale during the spawning restriction could lead to increased harvest even under the bag limit. Nonetheless, NMFS concurs at this time with the Council's expressed intent to allow states to determine whether or not recreationally caught fish may be sold. If the regulations in this rule lead to excessive harvesting during the spawning season, a corrective plan amendment should be initiated.

Comment: A commercial fisherman opposed the spawning restriction for mutton snapper and contended that the resource was healthy.

Response: The Council received extensive public comment urging reduction of fishing pressure on mutton snapper and has chosen limited spawning restrictions to reduce fishing pressure while minimizing adverse impacts on user groups. Additional measures may be imposed through the framework procedure if necessary.

Changes From the Proposed Rule

The word "land" and its verb forms have variations in meaning. To clarify the regulations, this final rule replaces "land" and its verb forms with "off-load" and its verb forms throughout 50 CFR part 646.

To clarify the measurement of fish, the definition of "total length" is revised to specify that the tail may be squeezed

together, and figure 1 is revised to show measurement of total length with the tail squeezed.

The proposed rule required that an application for a vessel permit had to be submitted at least 60 days prior to the date on which the applicant desired to have the permit made effective. This final rule reduces that period to 30 days. Except for brief periods when applications for permits are extremely numerous, NMFS is able to process and issue a permit in significantly less time than 30 days. However, an application at least 30 days before it is needed provides time to clear up discrepancies in its initial submission. A person is encouraged to submit an application well in advance of its required use, particularly if a permit is needed in January 1992. Because of the expected number of applications in this initial requirement for permits in the snapper-grouper fishery, a person applying after December 4, 1991, will not be assured of receiving a permit by January 1, 1992.

This rule clarifies that a fee is charged for each application for a permit, rather than for each permit issued, and for each sea bass trap identification tag issued. NMFS's costs in administering the permit system are incurred for each application, rather than for each permit issued. Further, the amount of the fee would be included on each application form but would not be included in the codified regulations. The Magnuson Act authorizes a level of fees not exceeding the administrative costs in issuing the permits. Such costs are computed at least annually in accordance with the NOAA Finance Handbook. The fees thus calculated are subject to change for a number of reasons, including increases due to Federal pay raises and reductions due to improved efficiency in the permitting system. Reference in the regulations to the NOAA Finance Handbook regarding the computation of fees would preclude the necessity for regulatory amendments when the computations indicate a new level of fees. Currently, a fee of $34 is charged for each application for a vessel permit, $7 for a replacement permit, and $1 for each sea bass trap identification tag.

In § 646.4(d), the references to "fish trap" are corrected to "sea bass trap."

Section 646.4(e) on the issuance of permits is reworded for simplicity and clarity.

A prohibition is added at § 646.7(a) regarding activities for which a vessel permit is required, specifically, fishing for tilefish, using a sea bass trap, or fishing for wreckfish. Although these activities without a permit were proscribed in the proposed rule, no prohibition was included in the prohibitions section.

In addition, other minor changes are made for clarity and consistency of usage.

In the preamble to the proposed rule, NMFS noted that the distinctions between fish traps, sea bass traps, and crustacean traps are primarily in terms of their catch. Comments on appropriate alternate criteria were requested—none were received. Accordingly, the definitions of the various traps are unchanged in this final rule. The Council and NMFS remain interested in alternate criteria, perhaps based on size and construction.

Effective Dates

Longlining for wreckfish is prohibited by emergency rule (56 FR 18742, April 24, 1991, corrected by 56 FR 23619, May 22, 1991) and extension thereof (56 FR 33210, July 19, 1991) through October 16, 1991. In this final rule the prohibition on bottom longlining for wreckfish (§ 646.22(g)(2)) and its corresponding prohibition (§ 646.7(aa)) are effective October 25, 1991.

The Council requested that all other management measures in Amendment 4 become effective January 1, 1992. So that measures that depend on the possession of a permit may be effective at that time, the revised requirements and procedures for vessel permits and fees are effective upon filing of this final rule with the Office of the **Federal Register**. The period between filing and January 1, 1992, will allow sufficient time for owners and operators of vessels in the commercial snapper-grouper fishery to obtain and submit applications and for NMFS to process and issue permits.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(3), finds for good cause, namely, to provide for timely and effective implementation of necessary conservation measures, that it is contrary to the public interest to delay for 30 days the effective date of §§ 646.4 (b) and (d), 646.7(aa), and 646.22(g)(2).

Endangered Species Impacts

Pursuant to section 7 of the Endangered Species Act of 1973, a biological assessment was prepared for amendment 4, which concluded that neither the directed fishery for snapper-grouper nor implementation of the amendment would adversely affect any populations of endangered or threatened species. The Assistant Administrator concurs with that conclusion.

Classification

The Secretary of Commerce determined that amendment 4 is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator determined that this final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291.

The Council prepared an RIR for amendment 4, which concludes that this will have overall net economic benefits. For some of the management measures, reasonable quantification of net benefits was possible. For other measures, necessary data were not available and costs and benefits could be quantified only in part. Impacts were analyzed qualitatively when data did not allow quantitative analysis. Although many of the management measures in amendment 4 involve significant short-term economic impacts on both recreational and commercial fishermen, cost/benefit tradeoffs in the long term are expected to be mostly favorable. In many cases, the long-term costs associated with not taking action are projected to be higher than costs associated with the management measures.

The Council prepared an initial regulatory flexibility analysis as part of the RIR, which described the effects this rule would have on small business entities. Since the closure of the public comment period on the proposed rule, the Assistant Administrator has prepared a final regulatory flexibility analysis and has determined that this rule will have significant effects on small entities. As with the overall economic effects, the positive long-term impacts are expected to outweigh the negative short-term impacts.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, North Carolina, and South Carolina. Georgia does not participate in the coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the

Coastal Zone Management Act, and all of the states agreed with the determinations.

This final rule contains three new collection-of-information requirements and revises three existing requirements subject to the Paperwork Reduction Act. These collections of information have been approved by the Office of Management and Budget and the following OMB control numbers apply: Applications for vessel permits (new)—0648–0205; catch and effort reports from selected, permitted vessels (new)—0648–0016; advance notice of off-loading wreckfish (new)—0648–0016; catch and effort reporting by selected charter vessels (revised)—0648–0016; catch and effort reporting by selected headboats (revised)—0648–0016; and information collected by NMFS port agents from dealers (receipts and prices paid for fish in the snapper-grouper fishery) and from fishermen (fishing vessel inventory) (revised)—0648–0013. The public reporting burdens for these collections of information are estimated to average 15, 10, 3, 18, 10, and 10 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (ATTN: Paperwork Reduction Act Projects 0648–0013, 0648–0016, and 0648–0205).

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 25, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.2, the definitions for "Black sea bass trap" and "Commercial fisherman" are removed; in the definition of "Fish in the snapper-grouper fishery", after the last species listed under "Grunts—Haemulidae", a new family, "Spadefishes—Ephippidae", and species are added, and in the listing of "Jacks—Carangidae", add "Lesser amberjack" and its genus and species to follow "Greater amberjack" and add "Banded rudderfish" and its genus and species to follow "Almaco jack"; new definitions for "Charter vessel", "Crustacean trap", "Fork length", "Headboat", and "Sea bass trap" are added in alphabetical order; and the definitions for "Fish trap" and "Total length" are revised to read as follows:

§ 646.2 Definitions.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a permit issued under § 646.4(b) is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

Crustacean trap means a type of trap historically used in the directed fishery for blue crab, stone crab, or spiny lobster and that contains at any time not more than 25 percent, by number, of fish other than blue crab, and spiny lobster.

Fish in the snapper-grouper fishery means the following species:

* * * * *

Spadefishes—Ephippidae

Spadefish, *Chaetodipterus faber*

* * * * *

Jacks—Carangidae

* * * * *

Lesser amberjack, *Seriola fasciata*

* * * * *

Banded rudderfish, *Seriola zonata*

* * * * *

Fish trap means a trap used for or capable of taking fish, except a sea bass trap or a crustacean trap.

Fork length means the distance from the tip of the head (snout) to the rear center edge of the tail (caudal fin). (See Figure 1.)

Headboat means a vessel that holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire. A headboat with a permit issued under § 646.4(b) is considered to be operating as a headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

* * * * *

Sea bass trap means a trap, other than a crustacean trap, that contains at any time no more than 25 percent, by number, of fish in the snapper-grouper fishery other than bank, rock, and black sea bass.

* * * * *

Total length means the distance from the tip of the head (snout) to the furthermost tip of the tail (caudal fin), excluding any caudal filament. The tail may be squeezed together. (See Figure 1.)

* * * * *

3. Section 646.4 is revised to read as follows:

§ 646.4 Permits and fees.

(a) *Applicability.* (1) To be eligible for exemption from the bag limits specified in § 646.23(b); to engage in a directed fishery for tilefish in the EEZ; to use a sea bass trap in the EEZ north of Cape Canaveral, Florida; or to harvest or possess wreckfish in or from the EEZ, off-load wreckfish from the EEZ, or sell wreckfish in or from the EEZ, an owner or operator of a vessel must obtain a vessel permit. A vessel with longline gear and more than 200 pounds (90.7 kilograms) of tilefish aboard is considered to be in a directed fishery for tilefish. It is a rebuttable presumption that a fishing vessel with more than 200 pounds of tilefish aboard harvested such tilefish in the EEZ.

(2) A qualifying owner or operator of a charter vessel or headboat may obtain a permit. However, such vessel must adhere to the bag limits when operating as a charter vessel or headboat.

(3) For a vessel owned by a corporation or partnership to be eligible for a vessel permit, the earned income qualification specified in paragraph (b)(2)(ix) of this section must be met by, and the statement required by that paragraph must be submitted by, an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator.

(4) An owner or operator of a vessel using or possessing a sea bass trap in the EEZ must obtain a vessel permit, a color code, and a trap identification tag from the Regional Director.

(5) A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(b) *Application for a vessel permit.* (1) An application for a vessel permit must be submitted and signed by the owner (in the case of a corporation, a

qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate;

(ii) The vessel's name and official number;

(iii) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(iv) Name, mailing address including zip code, and telephone number of the applicant, if other than the owner;

(v) Social security number and date of birth of the applicant and the owner (if the owner is a corporation, the employer identification number, if one has been assigned by the Internal Revenue Service);

(vi) Any other information concerning vessel and gear characteristics requested by the Regional Director;

(vii) If the applicant desires to fish for wreckfish, documentation that wreckfish caught by the vessel were sold during the 12 months preceding the application, or, in lieu thereof, documentation that equipment required specifically for use in the wreckfish fishery was on order or purchased for the vessel during the 12 months preceding the application;

(viii) If a sea bass trap will be used,

(A) The number, dimensions, and estimated cubic volume of the traps that will be used;

(B) The applicant's desired color code for use in identifying his or her vessel and buoys; and

(C) A statement that the applicant will allow an authorized officer reasonable access to his or her property (vessel, dock, or structure) to examine traps for compliance with these regulations;

(ix) A sworn statement by the applicant certifying that, during one of the 3 calendar years preceding the application,

(A) More than 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing; or

(B) His or her gross sales of fish were more than $20,000; or

(C) For a vessel owned by a corporation or partnership, the gross sales of fish of the corporation or partnership were more than $20,000; and

(x) Proof of certification, as required by paragraph (b)(3) of this section.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(ix) of this section before a permit is issued.

(c) *Change in application information.* The owner or operator of a vessel with a permit must notify the Regional Director in writing within 30 days after any change in the information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section and for each sea bass trap identification tag required under § 646.6(d). The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product of service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application or request for sea bass trap identification tags.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and the applicant meets the earned income requirement specified in paragraph (b)(2)(ix) of this section. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 646.5.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless the vessel is sold or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A vessel permit issued under this section is not transferable or assignable. A person purchasing a permitted vessel who desires to fish for fish in the snapper-grouper fishery must apply for a permit in accordance with the provisions of paragraph (b) of this section. The copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, its state registration certificate that accompanies the application must be in the name of the new owner.

(h) *Display.* A permit issued under this section must be carried on board the permitted vessel at all times and such vessel must be identified as provided for in § 646.6. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

(i) *Sanctions and denials.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement permit.

4. In § 646.5, figure 1 is redesignated as Figure 2 of this part and placed at the end of this part and § 646.5 is revised to read as follows:

§ 646.5 Recordkeeping and reporting.

(a) *Permitted vessels.* The owner or operator of a vessel for which a permit has been issued under § 646.4(b), and that is selected by the Science and Research Director, must maintain a fishing record for each fishing trip on a form available from the Science and Research Director. These forms must be submitted on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received by the Science and Research Director not later than the 7th day after the end of the reporting period. If no fishing occurred during a month, a report so stating must be submitted on one of the forms.

(b) *Charter vessels and headboats.* The owner or operator of a charter vessel or headboat that operates in the EEZ off the South Atlantic states or in adjoining state waters that is selected by the Science and Research Director must maintain a fishing record for each fishing trip, or a portion of such trips as specified by the Science and Research Director, on a form available from the Science and Research Director. These forms must be submitted on a periodic basis, as specified by the Science and Research Director.

(c) *Dealers.* A person who receives fish in the snapper-grouper fishery by way of purchase, barter, or trade that were harvested from the EEZ off the South Atlantic states or from adjoining state waters, and who is selected by the Science and Research Director, must provide information on receipts of such fish and prices paid, by species, to the Science and Research Director at monthly intervals, or more frequently if requested.

(d) *Commercial vessel, charter vessel, and headboat inventory.* A person

described under paragraphs (a) or (b) of this section who was not selected to report must provide the following information when interviewed by the Science and Research Director:

(1) Name and official number of vessel and permit number, if applicable;

(2) Length and tonnage;

(3) Current home port;

(4) Fishing areas by statistical area (see Figure 2);

(5) Ports where fish were off-loaded during the last year;

(6) Type and quantity of gear; and

(7) Number of full- and part-time fishermen or crew members.

(e) *Additional data and inspection.* (1) Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel, a recreational fisherman, or a dealer is required upon request to make fish in the snapper-grouper fishery, or parts thereof, available for inspection by the Science and Research Director or an authorized officer.

(2) On demand, a fisherman or dealer must make available to an authorized officer all records of off-loadings, purchases, barters, or sales of wreckfish.

5. Sections 646.6 and 646.7 are revised to read as follows:

§ 646.6 Vessel and gear identification.

(a) *Official number.* A vessel for which a permit has been issued under § 646.4(b) must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 feet (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Color code.* In addition, a vessel for which a permit has been issued under § 646.4(b) to fish with a sea bass trap must display its color code—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In the form of a circle at least 20 inches (60.8 cm) in diameter; and

(3) Permanently affixed tc or painted on the vessel.

(c) *Duties of operator.* The operator of each fishing vessel specified in paragraph (a) or (b) of this section must—

(1) Keep the official number and color code clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number and color code from an enforcement vessel or aircraft.

(d) *Traps.* Each sea bass trap used or possessed in the EEZ must have affixed to it an identification tag provided by the Regional Director that displays the assigned permit number and a number indicating the specific tag number for that trap.

(e) *Buoys.* The use of buoys to identify sea bass traps is not required. Each buoy used to mark sea bass traps must display the designated color code and permit number so as to be easily distinguished, located, and identified. The identification number must be in legible figures at least 2 inches (5.1 cm) in height and affixed to each buoy.

(f) *Presumption of ownership.* A sea bass trap in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to traps that are lost or sold if the owner reports the loss or sale within 15 days to the Regional Director.

(g) *Unmarked traps or buoys.* An unmarked or improperly marked sea bass trap or buoy deployed in the EEZ is illegal.

Such trap may be considered abandoned and may be disposed of in any appropriate manner by the Secretary. If an owner of an unmarked or improperly marked trap or buoy can be ascertained, such owner is subject to appropriate civil penalties.

§ 646.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Engage in a directed fishery for tilefish in the EEZ; use a sea bass trap in the EEZ north of Cape Canaveral, Florida; or harvest or possess wreckfish in or from the EEZ, off-load wreckfish from the EEZ, or sell wreckfish in or from the EEZ without a vessel permit, as specified in § 646.4(a)(1).

(b) Falsify information specified in § 646.4(b)(2) on an application for a vessel permit.

(c) Fail to display a permit, as specified in § 646.4(h).

(d) Falsify or fail to maintain, submit, or provide information required to be maintained, submitted, or provided, as specified in § 646.5 (a) through (d).

(e) Fail to make fish in the snapper-grouper fishery, or parts thereof, available for inspection, as specified in § 646.5(e)(1).

(f) Fail to make available records of off-loading purchases, barters, or sales of wreckfish, as specified in § 646.5(e)(2).

(g) Falsify or fail to display and maintain vessel and gear identification, as specified in § 646.6 (a) through (e).

(h) Possess a fish in the snapper-grouper fishery smaller than the minimum size limit, as specified in § 646.21(a)(1).

(i) Sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter fish in the snapper-grouper fishery smaller than the minimum size limit, as specified in § 646.21(a)(2).

(j) Possess a fish in the snapper-grouper fishery without its head and fins intact, as specified in § 646.21(b).

(k) Operate a vessel with fish in the snapper-grouper fishery aboard that are smaller than the minimum size limits, do not have head and fins intact, or are in excess of the cumulative bag limit, as specified in § 646.21(c) and § 646.23(e).

(l) Possess wreckfish in or from the EEZ in excess of the trip limit, as specified in § 646.21(d)(1).

(m) Transfer wreckfish at sea, as specified in § 646.21(d)(2).

(n) Off-load a wreckfish at a time not authorized or without prior notification, as specified in § 646.21(d)(4).

(o) Harvest or possess a jewfish or Nassau grouper in or from the EEZ or fail to release a jewfish or Nassau grouper taken in the EEZ, as specified in § 646.21 (e) and (f).

(p) During the wreckfish spawning-season closure or after a wreckfish quota closure, harvest or possess wreckfish in or from the EEZ; off-load wreckfish from the EEZ; sell, purchase, trade, or barter wreckfish in or from the EEZ; or attempt any of the foregoing, as specified in § 646.21(g) or § 646.24(b).

(q) During the greater amberjack and mutton snapper spawning seasons, exceed the bag limits for those species, as specified in § 646.21 (h) and (i).

(r) Fish with poisons or explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 646.22(a).

(s) Use a fish trap in the EEZ, or use a sea bass trap in the EEZ south of Cape Canaveral, Florida, as specified in § 646.22 (b) and (c)(1).

(t) When using or possessing a sea bass trap north of Cape Canaveral, Florida, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(c)(2).

(u) Use or possess in the EEZ north of Cape Canaveral, Florida, a sea bass trap that does not conform to the requirements for degradable openings and mesh sizes specified in § 646.22(c)(3) and (4).

(v) Pull or tend another person's sea bass trap except as specified in § 646.22(c)(5).

(w) When using or possessing a crustacean trap in the EEZ, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(d).

(x) Use trawl gear in a directed snapper-grouper fishery in the EEZ between Cape Hatteras, North Carolina, and Cape Canaveral, Florida, as specified in § 646.22(e)(1).

(y) Transfer at sea any fish in the snapper-grouper fishery from a vessel with trawl gear aboard to another vessel, or receive at sea any such fish, as specified in § 646.22(e)(2) and (3).

(z) Use an entanglement net to fish for fish in the snapper-grouper fishery in the EEZ; or, aboard a vessel that fishes in the EEZ on a trip with an entanglement net on board, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(f).

(aa) Use a longline to fish for fish in the snapper-grouper fishery in the EEZ where the charted depth is less than 50 fathoms (91.5 meters) or without a permit specified in § 646.4(b) on board; or, aboard a vessel with a longline on board that fishes on a trip in the EEZ where the charted depth is less than 50 fathoms (91.5 meters) or without a permit specified in § 646.4(b) on board, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(g)(1).

(bb) Fish for wreckfish with a bottom longline; or possess a wreckfish aboard a vessel that has a longline aboard, as specified in § 646.22(g)(2)

(cc) Exceed the bag and possession limits, as specified in § 646.23 (a) through (c).

(dd) Transfer at sea fish in the snapper-grouper fishery subject to a bag limit, as specified in § 646.23(f).

(ee) Use prohibited or unauthorized fishing gear in a special management zone, as specified in § 646.26 (b) and (c).

(ff) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

6. In § 646.21, paragraphs (a), (b), and (d) are revised and new paragraphs (f) through (i) are added to read as follows:

§ 646.21 Harvest limitations.

(a) *Minimum sizes.* (1) The following minimum size limits apply for the possession of fish in the snapper-grouper fishery in or from the EEZ:

(i) Black sea bass south of Cape Hatteras, North Carolina (35°15'N. latitude)—8 inches (20.3 centimeters), total length.

(ii) Lane snapper—8 inches (20.3 centimeters), total length.

(iii) Blackfin, cubera, dog, gray, mahogany, mutton, queen, schoolmaster, silk, and yellowtail snappers; and red porgy—12 inches (30.5 centimeters), total length.

(iv) Vermilion snapper—10 inches (25.4 centimeters), total length; or, for a vermilion snapper possessed aboard a vessel for which a permit has been issued under § 646.4(b)—12 inches (30.5 centimeters), total length.

(v) Red snapper and black, gag, red, scamp, yellowfin, and yellowmouth grouper—20 inches (50.8 centimeters), total length.

(vi) Greater amberjack—28 inches (71.1 centimeters), fork length; or, for a greater amberjack possessed aboard a vessel for which a permit has been issued under § 646.4(b)—36 inches (91.4 centimeters), fork length, or, if the head is removed, 28 inches (71.1 centimeters), measured from the center edge at the deheaded end to the fork of the tail. (See Figure 1.)

(2) A fish in the snapper-grouper fishery smaller than the minimum size limits of paragraph (a)(1) of this section may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered. In the cases of vermilion snapper and greater amberjack, the minimum size limits specified for such fish possessed aboard a vessel for which a permit has been issued under § 646.4(b) apply to sale, purchase, trade, or barter or attempts thereof.

(b) *Head and fins intact.* (1) Except as specified in paragraph (b)(2) of this section, a fish in the snapper-grouper fishery possessed in or taken from the EEZ must have its head and fins intact through off-loading. Such fish may be eviscerated but must otherwise be maintained in a whole condition.

(2) A greater amberjack possessed aboard or off-loaded from a vessel that has a permit specified in § 646.4(b) on board may be deheaded and eviscerated, but must otherwise be maintained in a whole condition through off-loading.

* * * * *

(d) *Wreckfish limitations.* (1) No vessel on any trip may possess wreckfish in or from the EEZ in excess of 10,000 pounds (4,536 kilograms), whole or eviscerated.

(2) A wreckfish taken in the EEZ may not be transferred at sea, regardless of where the transfer takes place; and a wreckfish may not be transferred in the EEZ, regardless of where the wreckfish was taken.

(3) A wreckfish possessed by a fisherman or dealer shoreward of the outer boundary of the EEZ or in an Atlantic coastal state will be presumed to have been harvested from the EEZ unless accompanied by documentation that it was harvested from other than the EEZ.

(4) A wreckfish may be off-loaded from a fishing vessel only between 8 a.m. and 4:30 p.m., local time, and such off-loading must be preceded by 24-hour notice to the NMFS Law Enforcement Office, Southeast Area, St. Petersburg, Florida, telephone (813) 893-3145.

* * * * *

(f) *Nassau grouper prohibition.* A Nassau grouper may not be harvested or possessed in or from the EEZ. A Nassau grouper taken incidentally in the EEZ by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

(g) *Wreckfish spawning-season closure.* During the period January 15 through April 15, each year, it is prohibited to: harvest or possess wreckfish in or from the EEZ; off-load wreckfish from the EEZ; sell, purchase, trade, or barter wreckfish in or from the EEZ; or attempt any of the foregoing. The prohibition on sale, purchase, trade, or barter does not apply to trade in wreckfish that were harvested, off-loaded, and sold, purchased, traded, or bartered prior to January 15 and were held in cold storage by a dealer or processor.

(h) *Greater amberjack spawning-season limit.* During April, each year, south of Cape Canaveral, Florida (28°35.1' N. latitude—due east of the NASA Vehicle Assembly Building), the possession of greater amberjack in or from the EEZ is limited to the bag limit specified in § 646.23(b)(4), regardless of whether or not the vessel from which such amberjack were taken has a vessel permit.

(i) *Mutton snapper spawning-season limit.* During May and June, each year, the possession of mutton snapper in or from the EEZ is limited to the number that may be contained in the aggregate bag limit for snappers specified in § 646.23(b)(2), regardless of whether or not the vessel from which such mutton snapper were taken has a vessel permit.

7. In § 646.22, figure 2 is redesignated as figure 3 of this part and placed at the end of this part; paragraph (c) is redesignated as paragraph (e); paragraph (b) is revised; and new

paragraphs (c), (d), (f), and (g) are added to read as follows:

§ 646.22 Gear restrictions.

* * * * *

(b) *Fish traps.* A fish trap may not be used in the EEZ. A fish trap deployed in the EEZ may be disposed of in any appropriate manner by the Secretary.

(c) *Sea bass traps.*

(1) *South of Cape Canaveral.* A sea bass trap may not be used in the EEZ south of Cape Canaveral, Florida (28°35.1'N. latitude—due east of the NASA Vehicle Assembly Building). A sea bass trap deployed in the EEZ south of Cape Canaveral, Florida, may be disposed of in any appropriate manner by the Secretary.

(2) *North of Cape Canaveral.* A person aboard a vessel that has on board a permit issued under § 646.4(b) who uses or possesses a sea bass trap in the EEZ north of Cape Canaveral, Florida, may not possess in or from the EEZ fish in the snapper-grouper fishery exceeding the following:

(i) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(ii) All other species except bank, rock, and black sea bass—zero.

(3) *Openings and degradable fasteners.* A sea bass trap is required to have on at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior axis of the trap's throat (funnel). The hinges and fasteners of each panel or door must be made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16-inch (4.8-millimeter) diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.062-inch (1.6 millimeter) diameter or smaller.

(4) *Mesh sizes.* A sea bass trap must meet all of the following mesh size requirements (based on centerline measurements between opposite wires or netting strands) (see Figure 3):

(i) Two-square-inch (5.08-square-centimeter) minimum open mesh area;

(ii) One-inch (2.5 centimeter) minimum length for shortest side;

(iii) Minimum distance of 1 inch (2.54 centimeters) between parallel sides of rectangular openings, and 1.5 inches (3.81 centimeters) between parallel sides of mesh openings with more than four sides; and

(iv) One-and-nine-tenths-inch (4.83 centimeter) minimum distance for diagonal measurement.

(5) *Tending traps.* A sea bass trap may be pulled or tended only by a person (other than an authorized officer) aboard the vessel permitted to fish such trap, or aboard another vessel if such vessel has on board written consent of the vessel permit holder.

(d) *Crustacean traps.* (1) A person aboard a vessel that has on board a permit issued under § 646.4(b) who uses or possesses a crustacean trap in the EEZ north of Cape Canaveral, Florida, may not possess in or from the EEZ fish in the snapper-grouper fishery exceeding the following:

(i) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(ii) All other species except bank, rock, and black sea bass—zero.

(2) A person aboard a vessel that does not have on board a permit issued under § 646.4(b) that uses or possesses a crustacean trap in the EEZ, or aboard a vessel that has on board a permit specified in § 646.4(b) who uses or possesses a crustacean trap in the EEZ south of Cape Canaveral, Florida, may not possess on any trip fish in the snapper-grouper fishery exceeding the following limits:

(i) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(ii) All other species—zero.

* * * * *

(f) *Entanglement nets.* (1) An entanglement net, including, but not limited to, a gillnet and a trammel net, may not be used to fish for fish in the snapper-grouper fishery in the EEZ. A person aboard a vessel that fishes in the EEZ on a trip with an entanglement net on board is limited on that trip to:

(i) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(ii) All other species in the snapper-grouper fishery—zero.

(2) For the purposes of this paragraph (f), an entanglement net is a flat, unmoored net, whether or not it is attached to a vessel, designed to be suspended vertically in the water to entangle the head or other body parts of fish that attempt to pass through the meshes.

(g) *Longlines.* (1) *All fish in the snapper-grouper fishery.*

(i) A longline may not be used to fish for fish in the snapper-grouper fishery in the EEZ—

(A) Where the charted depth is less than 50 fathoms (91.5 meters), as shown on the latest editions of NOAA coast charts (1:80,000 scale); or

(B) Without a permit issued under § 646.4(b) on board.

(ii) A person aboard a vessel with a longline on board that fishes on a trip in the EEZ where the charted depth is less than 50 fathoms (91.5 meters), or without a permit issued under § 646.4(b) on board, is limited on that trip to:

(A) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(B) All other species in the snapper-grouper fishery—zero.

(iii) For the purpose of this paragraph (g)(1), a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(2) *Wreckfish.* A bottom longline may not be used to fish for wreckfish. A person aboard a vessel that has a longline on board may not possess a wreckfish in or from the EEZ. For the purposes of this paragraph (g)(2), a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery longer than 1.5 miles (2.4 kilometers) on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

8. Section 646.23 is revised to read as follows:

§ 646.23 Bag and possession limits.

(a) *Applicability.* (1) Bag limits apply to a person who fishes in the EEZ from a vessel—

(i) That does not have on board a permit issued under § 646.4(b); or

(ii) That is operating as a headboat or charter vessel.

(2) Special limitations on possession of fish in the snapper-grouper fishery apply to a person fishing with or possessing a sea bass trap or a crustacean trap in the EEZ. See § 646.22 (c)(2) and (d).

(3) Special limitations on possession of fish in the snapper-grouper fishery apply to a person fishing with or possessing an entanglement net in the EEZ and fishing with or possessing a longline in the EEZ in water with a charted depth of less than 50 fathoms (91.5 meters). See § 646.22 (f)(1) and (g)(1)(ii).

(b) *Bag limits.* Daily bag limits per person are:

(1) Vermilion snapper—10.

(2) Snappers, excluding vermilion—10, of which no more than 2 may be red snapper.

(3) Groupers, excluding jewfish and Nassau grouper—5.

(4) Greater amberjack—3.

(5) Jewfish and Nassau grouper—0.

(c) *Possession limits.* (1) Except as specified in paragraph (c)(2) of this section, a person subject to a bag limit may not possess in or from the EEZ during a single day, regardless of the number of trips or the duration of a trip, any fish in the snapper-grouper fishery in excess of the bag limits specified in paragraph (b) of this section.

(2) Provided the vessel has two licensed operators aboard, as required by the Coast Guard for trips of over 12 hours, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip—

(i) A person aboard a charter vessel or headboat on a trip that spans more than 24 hours may possess no more than two daily bag limits; or

(ii) A person aboard a headboat on a trip that spans more than 48 hours and who can document that fishing was conducted on at least 3 days may possess no more than three daily bag limits.

(d) *Combination of bag limits.* A persons who fishes in the EEZ may not combine a bag limit specified in paragraph (b) of this section with a bag or possession limit applicable to state waters.

(e) *Responsibility for bag and possession limits.* The operator of a vessel that fishes in the EEZ is responsible for the cumulative bag of possession limit applicable to that vessel, based on the number of persons aboard.

(f) *Transfer of fish in the snapper-grouper fishery.* A fish in the snapper-grouper fishery subject to a bag limit specified in paragraph (b) of this section taken in the EEZ by a persons subject to the bag limits, as specified in paragraph (a) of this section, may not be transferred at sea, regardless of where such transfer takes place; and such fish may not be transferred at sea in the EEZ, regardless of where such fish was taken.

9. In § 646.24, paragraph (b) is revised to read as follows:

§ 646.24 Wreckfish quota and closure.

* * * * *

(b) When a quota specified in paragraph (a) of this section is reached, or is projected to be reached, the Secretary will publish a notice to that effect in the **Federal Register**. After the effective date of such notice, until an additional quota is available, it is prohibited to: Harvest or possess wreckfish in or from the EEZ; off-load wreckfish from the EEZ; sell, purchase, trade, or barter wreckfish in or from the EEZ; or attempt any of the foregoing. The prohibition on sale, purchase, trade, or barter does not apply to trade in wreckfish that were harvested, off-loaded, and sold, purchased, traded, or bartered prior to the effective date of the notice in the **Federal Register** and were held in cold storage by a dealer or processor.

10. Section 646.25 is revised to read as follows:

§ 646.25 Adjustment of management measures.

In accordance with the procedures of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic, the Regional Director may establish or modify for species or species groups in the snapper-grouper fishery the following: maximum sustainable yield, acceptable biological catch, total allowable catch, quotas, trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, and the time frame for recovery of an overfished species.

11. In § 646.26, paragraph (a)(1) is removed; paragraphs (a)(2) through (a)(22) are redesignated as paragraphs (a)(1) through (a)(21); in paragraph (c)(1) introductory text, the reference to "paragraphs (a) (1) through (19)" is revised to read "paragraphs (a)(1) through (a)(18)"; in paragraph (c)(1)(ii), the parenthetical phrase "(including powerheads)" is removed; in paragraph (c)(2), the reference to "paragraphs (a)(20) and (21)" is revised to read "paragraphs (a)(19) and (a)(20)"; in paragraph (c)(3), the reference to "paragraphs (a)(20) and (a)(22)" is revised to read "paragraphs (a)(19) and (a)(21)"; and a new paragraph (c)(4) is added to read as follows:

§ 646.26 Area limitations.

* * * * *

(c) * * *

(4) In the SMZs specified in paragraphs (a)(1) through (a)(10) of this section, a powerhead may not be used to take a fish in the snapper-grouper fishery. Possession of a powerhead and a mutilated fish in the snapper-grouper fishery in one of the specified SMZs, or after having fished in one of the SMZs, constitutes *prima facie* evidence that such fish was taken with a powerhead in the SMZ.

12. A new figure 1 is added as figure 1 of this part as follows:

BILLING CODE 3510-22-M

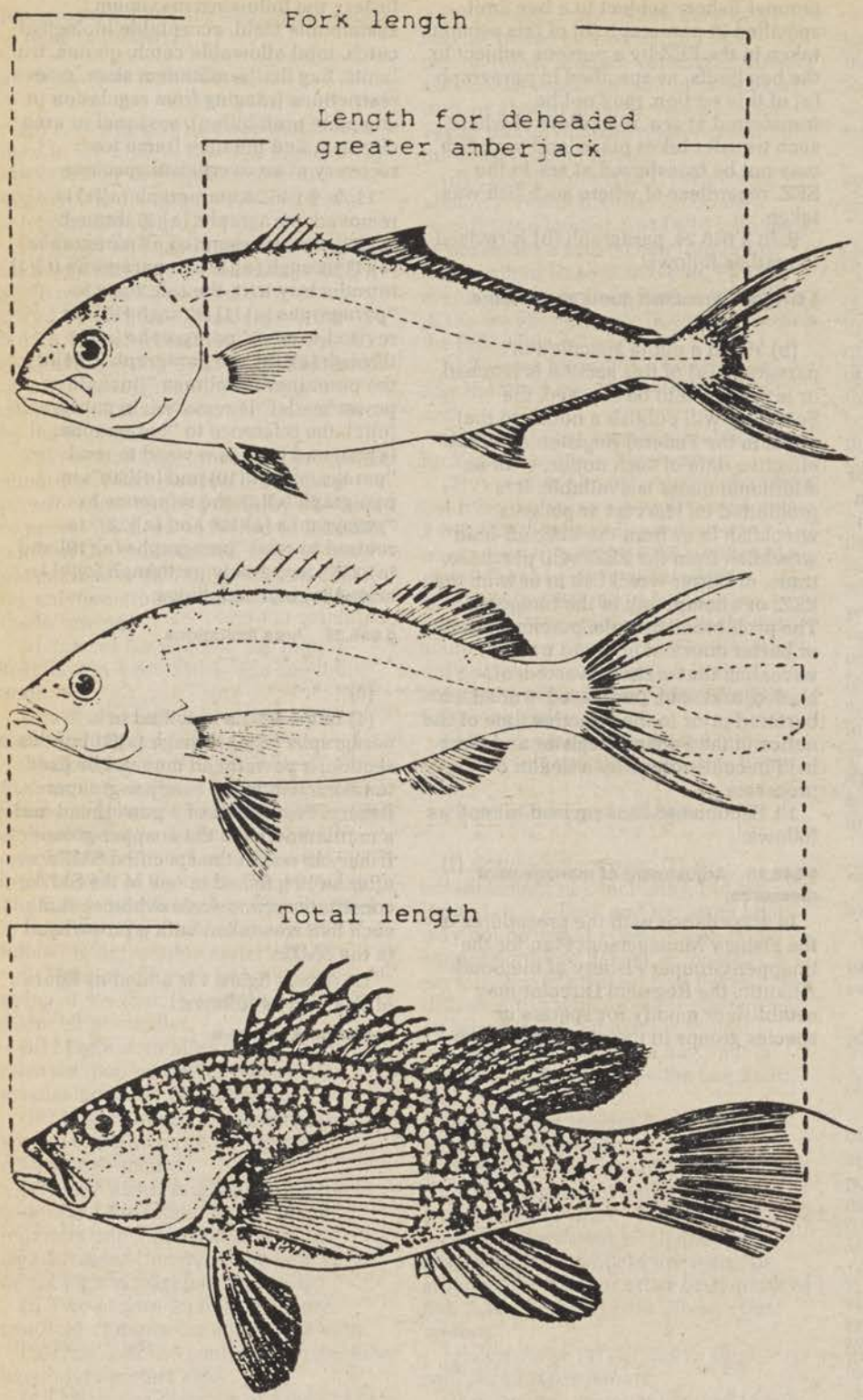

Figure 1. Illustrations of length measurements.

[FR Doc. 91-26173 Filed 10-25-91; 5:05 pm]
BILLING CODE 3510-22-C

Proposed Rules

Federal Register
Vol. 56, No. 211
Thursday, October 31, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Docket No. FV-91-299PR]

Limes Grown in Florida; Container Requirements for Seedless Limes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish container, container marking, and pack requirements for fresh seedless limes shipped within the production area in Florida. This action was unanimously recommended by the Florida Lime Administrative Committee (committee) at its meeting of June 12, 1991. This proposed action is designed to ensure that fresh seedless limes are shipped in such a manner that they arrive in the marketplace in good condition and to improve compliance with marketing over handling requirements. This proposed rule would also amend § 911.311 to make necessary conforming paragraph redesignations and other miscellaneous changes to update that section.

DATES: Comments must be received by November 15, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the docket number, date, and page number of this issue of the Federal Register

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION:

This proposed rule is issued under Marketing Agreement and Marketing Order No. 911, both as amended [7 CFR part 911], regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 18 lime handlers subject to regulation under the marketing order for limes grown in Florida. In addition, there are about 260 lime growers in Florida. Small agricultural growers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and growers may be classified as small entities.

Currently, Florida seedless limes handled or shipped to destinations within and outside the production area in containers prescribed by the regulations must be inspected and certified as meeting the specified minimum grade, size, juice, pack, and lot marking requirements, in §§ 911.311, 911.329, and 911.344. Seedless limes handled in containers other than those prescribed by the regulations must only be inspected and certified as meeting those same minimum size and juice requirements and they may only be shipped to markets within the production area.

This proposed rule would revise § 911.344 [7 CFR 911.344] to require fresh Florida seedless limes meeting the minimum size and juice requirements which are shipped to destinations within the production area in containers other than those currently authorized under § 911.329 to be packed in closed new or used rigid cardboard or wire-bound containers which are fairly well filled with the fruit not more than ½ inch below the top edge of the container, containing not more than 60 pounds of fruit.

In addition, this proposed rule would require the containers of such limes to be marked with a Federal-State Inspection Service (FSIS) lot stamp number applied to an adhesive tape seal affixed to the container in a manner to prevent the container from being opened and/or the fruit being removed without breaking the seal. The stamp and tape would be affixed to the container by the FSIS or by the handler under the supervision of the FSIS. Only stamps and tape which have been approved by the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, would be permitted to be used for purposes of stamping and sealing containers to meet these requirements.

The committee reports that the proposed requirements are needed to improve the quality of seedless limes delivered to markets in the production area in other than authorized containers. The use of unsuitable containers has reportedly resulted in the arrival of bruised and otherwise damaged seedless limes in the production area markets. The container requirements are designed to maintain the arrival condition of seedless limes delivered to such markets and improve returns to growers. Poor quality, bruised, and otherwise damaged fruit in the markets depresses prices for better quality fruit and results in lower overall returns to growers.

The committee also reports that substandard, undersized, uninspected limes have been discovered in

production area markets on a number of occasions. The container marking and sealing requirements are designed to improve compliance with order requirements, since they should help prevent violative shipments by making it easier to determine the identify of the handler of the limes and whether they were inspected and certified as meeting marketing order requirements.

The proposed requirements should help improve the demand for fresh seedless limes sold within production area in Florida in the interest of growers and handlers.

The proposed rule would also amend § 911.311 to make necessary conforming paragraph redesignations and other miscellaneous changes to update the language of the section. Current paragraph (a)(1) in § 911.311 would be deleted because it is not needed. Furthermore, the language in current paragraph (a)(2) of § 911.311 pertaining to standard pack for fresh seedless limes would be revised to specify that such requirements apply only to seedless limes shipped in containers authorized in § 911.329. This would be done since this proposed action would establish packing requirements in § 911.344 for seedless limes shipped in containers other than those authorized in § 911.329 making the "standard pack" requirement for such limes in § 911.311 unnecessary.

The committee works with the Department in administering the marketing agreement and order. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida limes. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida lime shipments are exempt from container requirements effective under the order. Exempt are shipments up to 55 pounds during any one day by a handler and gift shipments in individually addressed containers of up to 20 pounds of lime each. Also, limes utilized in commercial processing are not covered by the container requirements.

The proposed action reflects the committee's and the Department's appraisal of the need to improve requirements applicable to shipments of fresh Florida seedless limes within the production area. The Department's view is that the proposed action would benefit lime handlers. The requirements over the past several years have not been sufficient in keeping limes in good condition during shipment to market. Although compliance with these requirements affects costs to handlers, these costs would be significantly offset when compared to the benefits resulting to growers, handlers, and consumers from the fruit being in good condition upon arrival in the marketplace.

Based on the above, the Administrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

A 15-day comment period is deemed appropriate for this proposed action since Florida limes are shipped to market on a year round basis, and this action should be made effective as soon as possible to be of maximum benefit to the industry.

List of Subjects in 7 CFR Part 911

Florida, Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 911 be amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 911.311 is amended by revising the section heading; by removing current paragraph (a)(1); by redesignating paragraph (b) as paragraph (e); by redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a) through (d); by redesignating paragraphs (a)(2)(i) through (a)(2)(v) as paragraphs (a)(1) through (a)(5); and by revising redesignated paragraphs (a) introductory text, (b), and (c) to read as follows:

§ 911.311 Florida lime pack and container marking regulation.

(a) No handler shall handle any limes grown in the production area, of the group known as seedless, large fruited, or Persian limes (including Tahiti, Bearss and similar varieties), in any container specified in § 911.329, unless such limes meet the requirements of standard pack and each container in each lot is marked or stamped on one outside end in letters at least ¼ inch in height to show the United States grade applicable to such lot and either the average juice content of the limes in such lot or the phrase "average juice content forty-two percent (42%) or more": *Provided*, That, in lieu of such marking requirement, any handler may affix to the container a label, brand, or trademark, registered with the Florida Lime Administrative Committee in accordance with the following, which appropriately identifies the grade:

* * * * *

(b) No handler shall handle any limes grown in the production area in any container specified in § 911.329 unless such container is marked with a Federal or Federal-State Inspection Service lot stamp number showing that the limes have been inspected in accordance with regulations issued under § 911.48 of the marketing order.

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to individual packages of limes not exceeding four pounds, net weight, that are within master containers, except that if such packages are individual bags, either such bags or the master containers thereof shall be marked or labeled in accordance with the requirements of paragraph (a) of this section, and master containers shall be marked or labeled in accordance with the requirements of paragraph (b) and the requirements of § 911.329(a)(2)(v).

* * * * *

3. Section 911.344 is amended by revising the section heading and paragraph (a)(2) to read as follows:

§ 911.344 Florida lime grade, size, and container regulation.

(a) * * *

(2) Such limes of the group known as seedless, large-fruited, or Persian limes (including Tahiti, Bearss, and similar varieties) meet the requirements of §§ 911.311 and 911.329 and grade at least U.S. Combination, Mixed Color: *Provided*: That at least 75 percent, by count, of the limes in the lot meet the requirements of the U.S. No. 1 grade, and the remainder meet the requirements of the U.S. No. 2 grade: *Provided further*, That stem length shall not be considered a factor of grade: *Provided further*, That such limes not meeting these requirements may be handled within the production area if:

(i) They meet the size requirements in paragraph (a)(3) of this section;

(ii) they contain not less than 42 percent juice content by volume;

(iii) they are packed in containers other than those authorized under § 911.329: *Provided*, That they are packed in closed new or used rigid cardboard or wire-bound containers

which are fairly well filled with the fruit not more than ½ inch below the top edge of the container, containing not more than 60 pounds, net weight, of limes; and

(iv) they are in containers marked with a Federal-State Inspection Service (FSIS) lot stamp number applied to an adhesive tape seal affixed to the container in a manner to prevent the container from being opened and/or the fruit being removed without breaking the seal.

The stamp and tape shall be affixed to the container by the FSIS or by the handler under the supervision of the FSIS. Only stamps and tape which have been approved by the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, may be used for purposes of stamping and sealing containers to meet these requirements.

* * * * *

Dated: October 25, 1991.

Robert C. Keeney,

Deputy Director; Fruit and Vegetable Division.

[FR Doc. 91-26140 Filed 10-30-91; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1425

Cooperative Marketing Associations; Eligibility Requirements for Price Support

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Credit Corporation (CCC) is proposing to amend the regulations governing cooperative marketing associations to provide minimum financial requirements for cooperatives approved to participate in the price support program on behalf of their members for canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed. These financial requirements are similar to those financial requirements for cooperative marketing associations marketing other approved commodities.

DATES: Written comments must be received on or before December 2, 1991 in order to be assured of consideration.

ADDRESSES: Send comments to Director, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Richard M. Ackley, Chief, Cooperative and Analysis Branch; Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under U.S. Department of Agriculture (USDA) procedures in accordance with provisions of the Secretary's Memorandum No. 1512-1 and Executive Order 12291, and has been determined to be "not major" because these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, no Environmental Assessment or Environmental Impact Statement is needed.

The title and number of the Federal assistance program to which this proposed rule applies are: Title—Commodity Loans and Purchases—10.051; as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

The regulations governing the eligibility of cooperative marketing associations to receive price support loans and purchases from CCC set forth at § 1425.10 provide minimum net worth requirements for cooperative marketing associations approved to participate in the price support program on behalf of their members. These net worth requirements do not include provisions for cooperative marketing canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed. This proposed amendment will provide net worth requirements for these commodities.

Information collection requirements contained in this regulation (7 CFR part 1425) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control No. 0560-0040. Public reporting burden for the collection of information contained in this regulation is estimated to range from 30 minutes to 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-0040), Washington, DC 20503.

List of Subjects in 7 CFR Part 1425

Cooperatives, Price support programs, Reporting and recordkeeping requirements, Financial requirements.

Proposed Rule

Accordingly, 7 CFR part 1425 is proposed to be amended as follows:

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

1. The authority citation for 7 CFR part 1425 continues to read as follows:

Authority: 7 U.S.C. 1444(a), 1441, 1446(d), 1447, and 1421(a); 15 U.S.C. 714b, 714c, and 714j.

2. 7 CFR 1425.10(b)(3) is revised to read as follows:

§ 1425.10 Financial condition.

* * * * *

(b) * * *

(3)(i) The net worth of the cooperative. The cooperative shall be considered to have a sufficient net worth if such net worth is equal to the product of an amount per unit for a commodity (as set forth in Table 1) multiplied by the total number of units of such commodity handled by the cooperative during the preceding marketing year, or, if the cooperative is in its first full marketing year of operations, the estimated quantity of such commodity that it will handle during such year. If a cooperative has not been approved to participate in a price support program for each of three crop years immediately preceding the crop year for which

approval is being considered, CCC may establish the unit total of a commodity to be used in determining the sufficiency of the cooperative's net worth.

(ii) If the amount of the net worth of the cooperative is between 34 and 99 percent of the amount computed in accordance with paragraph (b)(3)(i) of this section and the cooperative is determined by CCC to be otherwise financially sound, CCC may determine that the operation of the cooperative is being carried out in a financially sound basis. Such a determination by CCC may be made if (A) the board of directors of the cooperative agrees to make a capital retain in the amount set forth in Table 2 with respect to each unit of the commodity delivered to the cooperative until the net worth of the cooperative is at least equal to the amount computed in accordance with paragraph (b)(3)(i) of this section and (B) the cooperative agrees to deduct the full amount of the estimated expenses of handling the commodities received by the cooperative. The failure to carry out such agreements shall be grounds for terminating a cooperative's approval.

TABLE 1

Commodity	Unit	Amount per unit
Barley	Bushel	.13
Canola	Hundredweight	.62
Corn	Bushel	.13
Cotton	Bale	6.40
Flaxseed	Hundredweight	.62
Honey	Hundredweight	1.90
Mustard Seed	Hundredweight	.62
Oats	Bushel	.13
Rapeseed	Hundredweight	.62
Rice	Hundredweight	.52
Rye	Bushel	.13
Safflower	Hundredwight	.62
Seed Cotton (lint basis).	Pounds	.008
Sorghum	Hundredweight	.19
Soybeans	Bushel	.43
Sunflower Seed	Hundredweight	.62
Wheat	Bushel	.15

TABLE 2

Commodity	Unit	Amount per unit
Barley	Bushel	.07
Canola	Hundredweight	.32
Corn	Bushel	.07
Cotton	Bale	3.20
Flaxseed	Hundredweight	.32
Honey	Hundredweight	.95
Mustard Seed	Hundredweight	.32
Oats	Bushel	.07
Rapeseed	Hundredweight	.32
Rice	Hundredweight	.26
Rye	Bushel	.07
Safflower	Hundredwight	.32
Seed Cotton (lint basis).	Pounds	.004
Sorghum	Hundredweight	.10
Soybeans	Bushel	.22

TABLE 2—Continued

Commodity	Unit	Amount per unit
Sunflower Seed	Hundredweight	.32
Wheat	Bushel	.08

* * * * *

Signed this 24th of October, 1991, in Washington, DC.

Keith Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-26291 Filed 10-30-91; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Part 1944

Processing Preapplications for Rural Rental Housing (RRH) Assistance

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the processing of preapplications for Rural Rental Housing (RRH) assistance. This action is necessary to streamline and strengthen the manner in which preapplications are processed, provide priority for development of RRH complexes in areas of greatest need, provide further guidance on location of proposed complexes, establish guidelines for development of new units in areas with existing FmHA financed units and clarify when preference will be given for donated land. The intended effect is to improve credit quality and make our regulations more responsive to the prudent development of RRH complexes in rural America.

DATES: Comments must be submitted on or before December 30, 1991.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulation Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Chief, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, room 5349—South Agriculture Building, Washington, DC 20250, telephone (202) 382-1608.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one Agency or be controversial. The net result is to provide better service to rural communities.

Background/Discussion

The demand the RRH loans in rural America has steadily increased over the past several years. Throughout most of rural America, the demand for RRH assistance outweighs available funds and resources. Preapplications for assistance are currently processed in a manner which attempts to give priority to areas which meet program intent and objectives. With increasing demands, FmHA must streamline and strengthen the process by which preapplications are processed, amend the priority processing system to direct resources to truly rural and needy areas and improve credit quality standards.

The major highlights of the proposed revisions to §§ 1944.231 and 1944.232 include:

1. Definitions of "Complete preapplication," "Ranking," and Rating "
2. Returning incomplete preapplications to the applicant.
3. Requiring preapplications to fall within the funding constraints of the District and/or State and provide guidance on returning preapplications of large dollar amounts.
4. Establishing timeframes to review preapplications for completeness and determining eligibility and feasibility.

The regulation also includes a general section on receiving and processing preapplications. Upon publication of this rulemaking action as a final rule, we intend to remove all references to processing MFH loans requests from subpart A of part 1910.

5. Rating complete preapplications upon receipt. Preapplications with exceptionally low point scores will not be reviewed further and will be returned to the applicant. This will alleviate FmHA personnel from determining the eligibility and feasibility of proposals with little or no chance of funding.

6. Clarifying that rating and ranking preapplications, and issuance of a favorable AD–622 does not ensure a reserve funding, or constitute loan approval.

7. Providing guidance on the impact of an appeal on the processing of other preapplications.

8. Providing guidance on returning applications of large dollars amounts which could not be funded with a State or District allocation.

9. Modifying the priority point system to:

a. Provide guidance on awarding points to proposals where units are to be developed in different locations.

b. Provide more priority points in areas having the lowest median incomes, and decrease the percentage of State median income necessary to receive points.

c. Provide more points for truly rural areas and increase the mileage by which the town must be located away from an ineligible area. This will encourage development of housing in truly rural areas.

d. Requiring National Office authorization to use other than the latest published Census data for determining points.

e. Remove the points for complexes which are to be located in market areas which do not have subsidized housing. Points were awarded in this area to encourage development of subsidized housing in areas without subsidized housing. This policy has helped develop subsidized housing in new areas, however, has hampered development of subsidized housing in areas with existing subsidized housing. The true need for subsidized housing is not measured by whether there is subsidized housing in the area. There are market areas with subsidized housing that may have a more pressing need for additional subsidized housing rather than a market area without subsidized housing. FmHA believes the market study should reflect the need for housing in the area, not whether there is subsidized housing in the area.

f. Increase the number of points available when private rental assistance (RA) is provided, require a minimum of 50% of the units in the complex to receive private RA, and require private RA to be equal to FmHA RA. FmHA also proposes the elimination of points for private RA proposals in the priority point system. This has long been a controversial area in the point system. On one hand, it is felt that the point system should recognize and encourage private investment in subsidies for tenants. Private RA can help assist more tenants in the complex and market area, and may relieve the need for Federal subsidies. On the other hand, it is felt that developers are "buying" points to receive a loan. Nonprofit entities, public bodies, and smaller developers cannot compete with applicants with further resources. Further, the system encourages applicants to "buy" points to have the highest rated preapplication. This has caused "point wars" in many areas. FmHA seeks comments in both the proposed language and removal of points for private RA.

g. Remove the priority processing points for elderly complexes. Priority points were given to in this area years ago to provide a stimulus and incentive for developing elderly housing. Since that time, FmHA has recognized a significant increase in the number of elderly complexes financed. FmHA now believes that priority should not given given for one type of complex over another. The market should influence the type of housing needed in the area; not the priority point system.

h. Add a new section to the point system to address the needs for various services within a rural community. Such services would include a Post Office, grocery store, pharmacy, schools and medical care. FmHA believes these services are necessary to ensure the viability of an RRH complex and to ensure that adequate services are readily available to tenants. FmHA is proposing to accomplish this objective through one of two methods. The first alternative is, as mentioned above, provide priority points for essential services. The second alternative is to require these services in the community in which the housing will be located. This will be addressed in more detail later in this rulemaking documents. FmHA only intends to implement one of these alternatives in the final rule and seeks comments on both alternatives and a recommendation for either alternative.

10. Section 1944.232 is revised to provide more guidance on private RA plans which FmHA will authorize and provide priority processing points. Briefly, the plan must offer the same dollar amount and terms in which FmHA RA is calculated and granted. As previously mentioned, FmHA is considering not providing priority points for private RA proposals. This section will be adopted or removed in the final rule as appropriate.

FmHA is also proposing revisions in § 1944.231 which deal with market areas. As required in 7 CFR 3015.304, Federal departments and agencies must consult with other substantially affected agencies to assure full coordination between program activities. To meet this objective and prevent duplication or overlapping of assistance, FmHA will consult with the Department of Housing and Urban Development (HUD) and similar lenders before developing a section 515 complex in a market area. FmHA will assess whether HUD has a similar proposal or existing units in the market area and seeks HUD's experience in the market area.

Revisions to site location requirements are also proposed. As previously mentioned, the demand for FmHA section 515 resources outweighs available funds. This further mandates FmHA to ensure that complexes are located in areas which most prudently serve the needs of rural residents. It is FmHA's intent to provide financing on housing which is to be located in "draw" communities. Such a town/city/village has adequate services and facilities which "draw" rural residents to the community. Such services and facilities include a grocery store, pharmacy, schools, health care and a Post Office as a minimum. FmHA believes such services and facilities are essential to ensure the success of the FmHA loan, and more importantly, locate complexes in areas where rural residents are already "drawn" for everyday and essential facilities and services. As previously mentioned, FmHA is proposing two alternatives to accomplish this objective. One alternative, as addressed earlier, is to provide priority points for services. This alternative requires such services. FmHA intends to implement only one alternative and seeks comments on both alternatives and a recommendation of one proposal over the other.

FmHA has also become increasingly concerned regarding the development of new section 515 complexes in areas with existing and/or proposed FmHA or HUD complexes. FmHA believes that stronger guidelines are needed in these instances to: Prevent overlapping or duplication of services; ensure the viability of existing and/or proposed FmHA and HUD units; and preclude potential vacancies in HUD and FmHA complexes.

FmHA is proposing that before a new section 515 proposal proceeds in the same market area as an existing or proposed FmHA or HUD complex, certain conditions exist which would

preclude FmHA from developing unnecessary units. Briefly, the first and second requirements preclude processing of a new preapplication when another preapplication is on hand within the same market area and/or a new complex has not been completed and/or is fully occupied. FmHA firmly believes that development of one fully operational apartment complex at a time in the same market area is crucial to preclude oversaturation and ensure the credit quality and viability of a proposal to which FmHA has already authorized. The third and fourth requirements deal with existing FmHA or HUD complexes in the same market area. Where FmHA or HUD complexes are experiencing vacancy problems, FmHA will not develop additional units. Additional units are not needed and development of same is not prudent loan underwriting or management of our existing portfolio. The fifth requirement precludes development of new units where the need in the market area is for further Rental Assistance (RA) or similar subsidy and not additional units. FmHA recognizes that in some market areas, additional RA or similar subsidy is necessary on existing subsidized apartment complexes. Some of these apartment complexes are experiencing vacancy problems because of the need for deeply subsidized units. In these market areas, the need is for further subsidies, not further units. Development of new units will not only jeopardize existing complexes but will not solve the inherent problem.

Again, the reader should be aware that FmHA is proposing two alternatives for two sections of this rulemaking package. One section, dealing with private RA, proposes eliminating points for private RA as one alternative, and revising the criteria to receive points for private RA as the other alternative. The other section, dealing with services available to sites, proposes providing points for specific services as one alternative, and a requirement for certain services as the other alternative. FmHA intends to implement only one alternative for each section and seeks comments on both alternatives with a recommendation for one alternative.

Implementation Proposal

The subject rule proposes changes to the manner in which preapplications are processed, including points available under the priority point system. When published as a final rule, FmHA intends for all preapplications on hand, where an AD–622 has not been issued requesting a formal application, to be subject to the contents of the final rule. All preapplications will be rerated based upon the priority point system in the final rule without regard to previous priority processing score or ranking; site locations will be reassessed, and new loans in areas with existing FmHA complexes will be revaluated. We do not intend to "grandfather" existing preapplications or have a "phase-in" period. FmHA recognizes this action will have an impact on preapplications which are in process. However, as previously mentioned, FmHA has a large backlog of preapplications. A survey of demand completed last year indicated that FmHA has in excess of $1.8 billion in preapplications on hand—over three times our current annual allocation of funds. A small sample of preapplications were selected and rerated under the proposed priority point system. In almost all cases, the preapplications received a lower priority point rating. This would indicate that proposals received under the proposed system will generally have a lower priority point score. Therefore, preapplications rated under the new system would be unable to compete with existing preapplications if a "grandfathering" or "phase-in" period were authorized. The changes addressed in this proposed rule reflect current Agency policy, compliment rural development initiatives, prudent loan underwriting and are consistent with the intent of the Housing Act of 1949, as amended. FmHA recommends that any potential applicant be cognizant of the changes in this proposed rule before developing a preapplication.

Programs Affected

These progams/activities are listed in the Catalog of Federal Domestic Assistance under Numbers 10.415, Rural Rental Housing Loans and 10.427, Rural Rental Assistance Payments.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 2015, subpart V, programs 10.415 Rural Rental Housing Loans and 10.427—Rural Rental Assistance Payments are subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1949, Public Law 91–90, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Paperwork Reduction Act

This proposed rule has been reviewed with regard to the requirements of the Paperwork Reduction Act (44 U.S.C. 3507). It has been determined that this rule does not involve changes to the information collection requirements previously cleared by the Office of Management and Budget under OMB Control number 0575–0047.

List of Subjects

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low and moderate incoming housing—Rental, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1489; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

2. In § 1944.213, paragraph (f) is added to read as follows:

§ 1944.213 Limitations.

* * * * *

(f) *New loans in areas with FmHA or HUD rental housing loans.* A request for an RRH/RCH loan to develop additional units in the same general market area with an FmHA or Department of Housing and Urban Development (HUD) project will not be determined eligible/feasible, authorized, or approved when:

(1) Another RRH/RCH preapplication in the same general market area is on hand with a higher priority point score and/or ranking;

(2) A previously authorized/approved FmHA or HUD project in the same

general market area has not been completed and/or is not fully rented-up;

(3) An existing FmHA or HUD project in the same general market area is experiencing vacancy problems;

(4) A request for a Special Servicing Market Rate Rent (SMR) (as defined in subpart C of part 1930 of this chapter) in the same general market area is pending or an SMR is in effect; or

(5) The need in the market area is for additional rental assistance (RA) or similar subsidy and not additional housing units.

3. In § 1944.215, paragraphs (q) and (r) are revised to read as follows:

§ 1944.215 Special conditions.

* * * * *

(q) *National flood insurance.* The provisions of the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 and Executive Order 11988, are applicable to FmHA authorities permitting financing of housing now located in, or to be located in, special flood or mudslide-prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of part 1806 of this chapter (FmHA Instruction 426.2) and subpart G of part 1940 of this chapter will apply.

(r) *Location of housing.* (1) All family projects must be located so as to be considered an integral part of a rural town/community/village with at least a Post Office, grocery store, pharmacy, school, and health care. Elderly, congregate and group home projects are to be located within the boundaries of such town/community/village. Public facilities and services to support congregate housing service packages are also required for congregate projects. For the purposes of this paragraph: A pharmacy is a place where prescription drugs are sold; a school may be an elementary, junior, middle, or high school; and health care can include a hospital, clinic, or physician with regularly scheduled hours at least 2 days per week.

(2) The location of the project should expand the supply of decent, safe, and sanitary housing for very low, low-, and moderate income individuals and families in a nondiscriminatory manner. The location should promote a greater choice of housing opportunities in the market area and promote an equal opportunity for the inclusion of all groups regardless of race, color, religion, sex, national origin, age, familial status, or handicap thereby opening up nonsegregated housing opportunities for all eligible tenants.

(3) Except as otherwise permitted by paragraph (r)(6) of this section, projects must be located within residential areas which are a part of an established rural community where essential public facilities (such as, but not limited to schools, Post Office, hospital and generally public water and sewer systems) and services (including, but not limited to a grocery store, pharmacy, health care) are located within the town/community/village where the project will be located. Available public facilities and services must be adequate to support the needs of the tenants and the housing project.

(4) In order to provide housing at the lowest cost possible, preference will be given to loan requests in which specific tracts of land will be donated by states, units of local government, public bodies, and nonprofit organizations, provided all of the following conditions are met:

(i) The land is suitable for the proposed housing and meets all FmHA site criteria;

(ii) Development costs of the site do not exceed the cost of purchasing another acceptable site in the market area including development costs;

(iii) Affording such preference is cost effective;

(iv) The donor of the land owns the site and is not part of the applicant entity;

(v) An identity of interest does not exist between the donor of the land and any members of the applicant entity; and

(vi) A return on investment is not paid to the borrower for the value of the donated land nor is the value of the land considered as part of the borrower's contribution.

(5) *Noncontiguous rental sites.* (i) Noncontiguous sites within the same community may be considered if feasible. Each site must meet all FmHA site criteria and an appraisal must be made on each site in accordance with subpart B of part 1922 of this chapter (available in any FmHA office). The units must be managed under one management plan with one loan agreement/resolution.

(ii) If a small community cannot support a project containing enough units to make it cost effective or in cases involving conversion of 502 inventory units, FmHA will consider a project which includes more than one site in the same or different communities. The State Office and applicant must mutually agree that the location of the sites will not adversely effect the efficiency of management and servicing of the projects. The requirements of paragraph (r)(5)(i) of this section will also apply.

(6) FmHA will consider financing new construction or the purchase and rehabilitation of existing structures (in accordance with § 1944.212(b) of this subpart) located in the downtown business areas of rural communities that have established a comprehensive strategy for meeting their community development and housing needs. That strategy must include the redevelopment, rehabilitation, restoration or revitalization of the downtown business area. The proposed project site must be located within the downtown business redevelopment/revitalization area and the following conditions must be met:

(i) Essential public facilities (such as schools, hospitals and generally central water and sewer systems) and services (such as shopping, medical and pharmaceutical) must be readily available in close and convenient proximity to the site and must be adequate to support the needs of the tenants and members and the housing project.

(ii) The community must have an official short-term community development and housing plan which sets forth its comprehensive strategy for meeting identified community development and housing needs. The plan will include the need for eliminating and preventing economic decay, slums or blight; the need of benefitting the lower-income population; or other community development needs having a particular urgency. The strategy should include a community wide component which describes the development strategy of the governing body, the major objectives the governing body seeks to accomplish, the priorities it has established, the factors taken into account in selecting areas for treatment and the anticipated public and private sources of funds necessary to conduct the treatment of each area selected. In addition, the plan should contain the following component strategies:

(A) *Neighborhood revitalization.* The strategy for alleviating physical deterioration, maintaining viable neighborhoods and stimulating investment to upgrade neighborhoods affected by blight and deterioration.

(B) *Housing.* The community-wide strategy to improve housing conditions and to meet the housing assistance needs that have been identified. Reference to any current Department of Housing and Urban Development approved housing assistance plan would be helpful as part of this component strategy.

(C) *Economic development.* The strategy for attracting private investment in the business community and for solving the critical problems

which may be the result of a stagnating or declining tax base or from population outmigration.

(iii) Evidence must be presented from the local governing body verifying that the community has adopted, through resolution or other official act, the community development and housing plan referenced in paragraph (r)(6)(ii) of this section. A copy of the adopted plan should be made available to FmHA. While it is not necessary that the downtown redevelopment/revitalization area be formally designated as an urban renewal or other similar area, evidence supporting a local determination that the downtown business area meets the criteria established in the community development and housing plan must be maintained in the locality's records. Documentation received from the local governing body must also identify the site or structure involved in the applicant's proposal as part of or essential to the downtown redevelopment/revitalization area.

(iv) Evidence must be presented to FmHA verifying the intended commitment of public and private resources which will be available for completing any other integrally related redevelopment/revitalization activities being undertaken in the downtown business area along with the applicant's proposed project.

(v) Prior review and concurrence must be received from the National Office before the State Director or District Director authorizes the applicant to develop a complete application. All of the information required in paragraph (r)(6) of this section must be provided by the applicant before National Office review.

(7) The property for which a loan is made must be located in a rural area as defined in § 1944.10 of subpart A of part 1944 of this chapter. However, if the area where the site is located has changed from rural to nonrural in accordance with the most current official census figures, preapplications received before the date the area was determined nonrural will be processed as expeditiously as possible and loans closed if the applicants are otherwise eligible.

* * * * *

4. Sections 1944.231 and 1944.232 are revised to read as follows:

§ 1944.231 Processing preapplications.

Preapplications will be processed in accordance with this section to assure that program intent is achieved and loan funds are utilized expeditiously and prudently. A preapplication is used to determine the applicant's eligibility, project feasibility and potential priority for loan funds, thereby eliminating proposals which have little or no chance of success or funding. The State Director is responsible for coordinating efforts with HUD in accordance with Exhibit K of this subpart (available in any FmHA office) to determine if HUD is considering a similar request for funding or has funded a similar proposal. This will ensure coordination between the two Federal agencies as required in 7 CFR 3015.304 so that Federal assistance does not overlap or conflict. The State Director is encouraged to establish this relationship with similar lenders such as State Housing Authorities in his/her jurisdiction. Paragraphs (a), (c)(5), (c)(6), (c)(7), (d), and (e) of this section do not apply to RCH preapplications.

(a) *Definitions.* As used in this section only. *Complete preapplication.* A preapplication consists of SF 424.2 and all additional information and materials outlined in Exhibit A–7 of this subpart. A preapplication lacking any of the aforementioned information will be considered incomplete.

Date of Preapplication. The date a preapplication is considered complete.

Ranking. The process of listing preapplications which have been determined eligible and feasible in priority point score order.

Rating. The process of assigning a priority point score to a complete preapplication.

(b) *Actions by the applicant.* Submit a complete preapplication utilizing Exhibit A–7 of this subpart as a guide to the District Office. Label all materials. Ensure that all information is clear, concise, and provides FmHA full and convincing documentation to support the proposal based upon the eligibility criteria and loan purposes contained in §§ 1944.211, 1944.212, and 1944.213 of this subpart. Submit proposals which meet the needs of the proposed market area and fall within funding constraints of the District and/or State.

(c) *Initial actions by District Office.* (1) The District Director will handle initial inquiries and provide basic information about the program. He/she should provide a preapplication (SF 424.2), other appropriate forms, and a copy of Exhibit A–7 of this subpart to applicants. The District Director may assist the applicant in completing SF 424.2 and the information required in Exhibit A–7 to the extent practicable. The District Director should advise the applicant not to develop a complete application unless so notified by FmHA.

(2) After receipt of the preapplication, the District Director will review the package to ensure that it is complete, accurate, and includes all information required in Exhibit A–7 of this subpart. This action should generally be completed within 15 days of receipt of the preapplication. Complete preapplications will be date-stamped. The date-stamp will reflect the "date of preapplication" defined in paragraph (a) of this section. Preapplications which do not contain all required information should be returned to the applicant with a letter informing them of the missing items. Incomplete preapplications will not be rated or ranked in accordance with this section, or recorded on processing cards.

(3) The District Director should check the Multi-Family Housing Information Status Tracking and Retrieval System (MISTR) to see if the applicant has pending preapplications in other districts or States. If so, the District Director should ascertain that the applicant has sufficient financial resources to meet the requirements of all preapplications.

(4) The District Director will notify the State Director of the pending preapplication and request the status of pending and funded proposals in the same market by HUD (and similar lenders, if applicable), in accordance with Exhibit K of this subpart (available in any FmHA office).

(5) The District Director will rate the complete preapplication in accordance with the priority point system outlined in paragraph (d) of this section. The District Director should record the points earned on Form FmHA 1905–11, Application and Processing Card—Association, after the applicant's name.

(6) The District Director will compare the rated preapplications with other rated preapplications on hand. In states where funds are not allocated to districts, the District Director will contact the State Office to ascertain the rating of the preapplication in relation to other preapplications in the state. When funds are not allocated to districts, the State Office should distribute a list of pending preapplications at least quarterly to each District Office.

(7) Preapplications with an exceptionally low priority rating, compared with other preapplications, which are not likely to be funded within the next 24 months will be returned to the applicant indicating that further review of the preapplication is impractical. The applicant will be informed of the priority point score, and clearly informed that an eligibility and feasibility review was not made. Review rights, for assignment of the point score only, should be provided to the applicant in accordance with Exhibit C of Subpart B of Part 1900 of this chapter.

(d) *Priority point system.* All complete preapplications (except RCH) received in the District Office will be rated in accordance with the following point system. In cases where the preapplication covers development of units on sites in different locations, points will be awarded based upon the county in which the majority of the units will be developed. In cases where an equal number of units are being developed in different locations, the points awarded will be for the county with the higher point score. The process of rating a preapplication does not reserve funding or ensure continued processing.

(1) *Projects in counties having a high percentage of substandard housing.* For this purpose, each state will use county data based upon the latest published census unless better and more specific state-wide data is available, and the use of such data is authorized by the National Office. Some counties with a low percentage of substandard housing have areas with a substantially higher percentage of substandard housing. In these cases, the State Director may authorize use of reliable data for those specific communities/areas when such data is available on a state-wide basis, and the use of such data is authorized by the National Office. The following chart will be utilized. If the state mean of substandard housing exceeds 15 percent, use Chart A. If the state mean is 15 percent or less, use Chart B. Up to forty points will be distributed as follows:

A (%)	B (%)	Points
Over 34	Over 18	40
31–34	17–18	35
27–30	15–16	30
23–26	13–14	25
19–22	11–12	20
15–18	9–10	15
11–14	7–8	10
7–10	5–6	5
0–6	0–4	0

(2) *Projects in counties having the lowest median rural household income.* For this purpose, each state will use county data based upon the latest published census unless better and more specific state-wide data is available, and the use of such data is authorized by the National Office. Some counties with high median incomes may have areas of substantially lower income. In these cases, the State Director may authorize use of reliable data for those specific communities/areas when such data is available on a state-wide basis, and the use of such data is authorized by the National Office. Up to forty points will be distributed as follows:

Less than 60% of state median income—40 points.

(%)	Points
60–69	30
70–79	20
80–89	10
90 and above	0

(3) *Projects which will serve the needs of rural communities located a number of miles from the FmHA eligibility line around urban areas considered ineligible for FmHA housing loans as determined by § 1944.10 of subpart A of part 1944 of this chapter.* Up to forty points will be distributed based upon map mileage from the proposed complex site to the ineligible area line over normally travelled roads:

Miles	Points
75 or more	40
55–74	30
35–54	20
20–34	10
Less than 20	0

(4) *Projects located within a town/community/village with essential services.* For the purposes of this paragraph, a pharmacy is a place where prescription drugs are sold and a school may be an elementary, junior, middle or high school.

(i) Points will be awarded for projects located within a town/community/village having the following services:

Services	Points
(A) Post Office	5
(B) Grocery store	5
(C) Pharmacy	5
(D) School (Family or Mixed Project only)	5
(E) Hospital, health clinic or primary health care (Elderly, Congregate, or Group Home project only)	5

(ii) A family or mixed project located within a town/community/village having services identified in paragraphs (d)(4),(i)(A), (B), (C), and (D) of this section will be granted an additional 10 points (for a total of 30 points). An elderly, congregate or group home project located within a town/community/village having services identified in paragraphs (d)(4)(i)(A), (B), (C), and (E) of this section will be granted an extra 10 points (for a total of 30 points).

(5) *Projects assured of having National Office approved RA from sources other than FmHA.* Points will not be assigned until the private RA has been authorized by the National Office. Priority processing points will only be granted when the dollar amount of private RA being offered is the same as the dollar amount per unit of current FmHA RA. Points will not be authorized for rental subsidies from other federal agencies such as HUD or state agencies administering a state RA program. Up to 25 points will be distributed as follows:

Percent of units	Points
90–100	25
80–89	20
70–79	15
60–69	10
50–59	5
Less than 50	0

(6) *Projects in which a specific tract of land will be donated in accordance with § 1944.215(r)(4) of this subpart.* Five points will be distributed as follows:

	Points
Complexes with donated land	5
Complexes without donated land	0

(e) *Determining eligibility and feasibility.* After rating the preapplication, if the priority processing point score is sufficient to potentially fund the preapplication within the next 24 months (except for RCH preapplications), the District Director will review the proposal to determine eligibility, feasibility and compliance with loan purposes, policies, and regulations.

(1) The feasibility determination will include a review of HUD's (and similar lender's, if applicable) feedback on the market area in accordance with Exhibit K of this subpart (available in any FmHA office), and § 1944.213(f) of this subpart.

(2) A determination of eligibility and feasibility will generally be made within 45 days of receipt of a complete preapplication. The review will include an evaluation of the proposal by the State Office Architect, who will advise the loan approval official of the acceptability of the proposed development.

(3) In cases where the proposal does not meet FmHA requirements, the District Director will notify the applicant in writing of the specific reasons why the request was not favorably considered. Appeal rights will be provided in accordance with Subpart B of Part 1900 of this chapter. The case file and processing card will indicate the date that the preapplication was determined eligible/feasible or rejected.

(f) *Large dollar amount loan requests.* The following will be followed when a preapplication of a large dollar amount which exceeds a district and/or state allocation. Such a loan request may not be rejected solely on the dollar amount. An AD–622 inviting a formal application will not be issued for a loan proposal which exceeds a state allocation or the district allocation in which the proposal is located.

(1) In states that do not allocate to districts, if a loan request is received which exceeds the state allocation, the proposal should be given a cursory eligibility and feasibility review. If the preapplication appears to meet FmHA requirements, the applicant should be notified that the proposal appears eligible and feasible; however, FmHA does not have the resources to fund the proposal. Also, if the priority point score is low, the applicant should also be informed that the proposal lacks priority for funds even if reduced in size and/or scope. The proposal should be returned to the applicant, and review rights provided in accordance with Exhibit C of subpart B of part 1900 of this chapter. FmHA may suggest ways to reduce the size and/or scope of the proposal if the priority point score so warrants.

(2) In states where funds are allocated to districts, if a loan request is received in the district which exceeds the district allocation, the proposal should be given a cursory eligibility and feasibility review. If the preapplication appears to meet FmHA requirements, the District Director should discuss the size of the loan request with the State Office. If the priority points warrant, the State Director may authorize the district to exceed the 150% limitation for issuing Forms AD–622 provided the state will remain within 150% or National Office authorization is obtained and the state can provide the additional funds for the proposal. If the state cannot authorize the district to exceed the 150% limitation, the applicant should be notified that the proposal appears eligible and feasible; however, FmHA does not have the resources to fund the proposal. Also, if the priority point score is low, the applicant should also be informed that the proposal lacks priority for funds even if reduced in size and/or scope. The proposal should be returned to the applicant, and review rights provided in accordance with Exhibit C of subpart B of part 1900 of this chapter. FmHA may suggest ways to reduce the size and/or scope of the proposal if the priority point score so warrants.

(g) *Effect of appeals on processing preapplications.* When a preapplication for assistance is denied, appeal rights in accordance with subpart B of part 1900 of this chapter will be provided to the applicant. Processing of other preapplications may continue; however, an AD–622 may not be issued on any other preapplications meeting all of the following conditions until the pending appeal has been concluded. If not all of the following conditions exist, other preapplications may continue to be processed regardless of the pending appeal.

(1) Is similar in type (family, elderly, congregate, etc.);

(2) Is located in the same market area;

(3) Has a lower priority point score; or has an equal score with the same or later preapplication date.

(h) *Ranking for potential funding.* Preapplications for RCH assistance will be processed in accordance with subparagraph (3). All other preapplications which have been determined eligible, feasible, and have sufficient points in the priority processing system will be ranked for funding in accordance with this section. Ranking of a preapplication does not assure funding or loan approval. Ranking provides the vehicle for FmHA to assure that loan funds are used to meet program objectives, and precludes development of costly applications when there are no reasonable prospects for funding the proposal. Ranking and issuance of a favorable AD–622, requesting a formal application, will be handled as follows:

(1) In states that allocate funds to districts (except for RCH preapplications): (i) Rated preapplications will be ranked numerically from highest to lowest based upon points received in the priority processing system. When processing levels permit, the District Director will review the list, and select the highest ranking preapplication(s) for continued processing.

(ii) If two (or more) preapplications have the same ranking, the one from a nonprofit or public body will receive preference. If neither is from a nonprofit or public body, the preapplication with the earliest date of preapplication will be considered to have the highest ranking. If two (or more) preapplications from a nonprofit or public body have the same ranking, the one with the earliest date of preapplication will be considered to have the highest ranking.

(iii) Regardless of point score, preapplications which have rated, but have not been determined eligible and feasible, will have no effect on the ranking process.

(iv) Selected preapplications which are within the District Director's loan approval authority will be forwarded to the State Office for authorization to issue an AD–622 which will notify the applicant of eligibility and feasibility and request a formal application.

(v) After a preapplication is forwarded to the State Office, preapplications placed on the ranking list, regardless of ranking, will have no effect on the forwarded preapplication. When the AD–622 is issued, the preapplication will immediately be removed from the ranking list.

(vi) Selected preapplications which are not within the District Director's loan approval authority will be forwarded to the State Office for further review prior to notification and, if applicable, submission to the National Office. The preapplication will remain on the ranking list until authorization to proceed is obtained from the State Office, or the preapplication is denied. After a preapplication is forwarded to the State Office, preapplications placed on the ranking list, regardless of ranking, will have no effect on the forwarded preapplication.

(vii) When ranking and processing levels do not permit issuance of an AD–622 requesting a formal application, the State Director will request the District Director to notify the applicant by use of Form AD–622 of their eligibility/feasibility, but advised that processing priorities and current funding levels will not permit further processing of their preapplication at this time. These preapplications will be retained on the ranking list; however, only one such AD–622 need be issued. These applicants should also be advised that their preapplications will be retained and considered for future funding based upon its ranking.

(viii) If processing levels do not permit issuance of an AD–622 requesting a formal application within one year of placement on the ranking list, the applicant will be notified in writing that their preapplication must be updated. A specific timeframe (generally 30 days) will be provided. If the priority point score is also so low that processing levels would not permit funding in the next 12 months, the preapplication will be returned to the applicant with a letter indicating that it has been withdrawn based upon its relative ranking with other preapplications on file. Review rights, for assignment of the priority points only, will be provided in accordance with Exhibit C of subpart B of part 1900 of this chapter.

(2) In states that do not allocate funds to districts (except for RCH preapplications): (i) The State Director will rank all eligible and feasible

preapplications numerically from highest to lowest based upon points received in the priority processing system. When processing levels permit, the State Director will review the list and select the highest ranking preapplication(s) for continued processing.

(ii) If two (or more) preapplications have the same ranking, the one from a nonprofit or public body will receive preference. If neither is from a nonprofit or public body, the preapplication with the earliest date of preapplication will be considered to have the highest ranking. If two (or more) preapplications from a nonprofit or public body have the same ranking, the one with the earliest date of preapplication will be considered to have the highest ranking.

(iii) Regardless of point score, preapplications which have been rated, but have not been determined eligible and feasible, will have no effect on the ranking process.

(iv) Selected preapplications which are within the State Director's loan approval authority will be issued an AD–622 by the District Director which will notify the applicant of eligibility and feasibility and request a formal application.

(v) Preapplications placed on the ranking list, regardless of ranking, after the State has authorized the District Director to issue an AD–622, will have no effect on the preapplication pending issuance of the AD–622. When the AD–622 is issued, the preapplication will immediately be removed from the ranking list.

(vi) Selected preapplications which are not within the State Director's loan approval authority will be forwarded to the National Office for further review. The District Director will notify applicants of this action. The preapplication will remain on the ranking list until authorization to proceed is obtained or the preapplication is denied. After a preapplication is forwarded to the National Office, preapplications placed on the ranking list, regardless of ranking, will have no effect on the forwarded preapplication.

(vii) When ranking and processing levels do not permit issuance of an AD–622 requesting a formal application, the State Director will request the District Director to notify the applicant by use of Form AD–622 of their eligibility/feasibility, but advised that processing priorities and current funding levels will not permit further processing of their preapplication at this time. These preapplications will be retained on the ranking list; however, only one such AD–622 need be issued. These applicants should also be advised that their preapplications will be retained and considered for future funding based upon its ranking.

(viii) If processing levels do not permit issuance of an AD–622 requesting a formal application within one year of placement on the ranking list, the applicant will be notified in writing that their preapplication must be updated. A specific timeframe (generally 30 days) will be provided. If the priority point score is also so low that processing levels would not permit funding in the next 12 months, the preapplication will be returned to the applicant with a letter indicating that it has been withdrawn based upon its relative ranking with other preapplications on file. Review rights, for assignment of the priority points only, will be provided in accordance with Exhibit C of subpart B of part 1900 of this chapter.

(3) *RCH preapplications.* (i) The State Director will contact the National Office to determine if sufficient funds are available for the RCH preapplication. Preapplications for RCH assistance will be processed in the order in which a complete preapplication [as defined in paragraph (a) of this section] was received.

(ii) All preapplications for RCH assistance will be forwarded to the National Office for review and authorization in accordance with paragraph (j) of this section.

(iii) If authorized by the National Office, the State Director will issue an AD–622 which will notify the applicant of eligibility and feasibility and request a formal application.

(iv) When processing levels do not permit issuance of an AD–622 requesting a formal application, the State Director will request the District Director to notify the application by use of Form AD–622 of their eligibility/feasibility, but advised that processing priorities and current funding levels will not permit further processing of their preapplication at this time. These preapplications will be retained; however, only one such AD–622 need be issued. Applicants should also be advised that their preapplications will be retained and considered for future funding. If processing levels do not permit issuance of an AD–622 requesting a formal application within one year of placement on the ranking list, the applicant will be notified in writing that their preapplication must be updated. A specific timeframe (generally 30 days) will be provided.

(i) *Actions after an AD–622 is issued requesting a formal application.* (1) After issuance of the AD–622, the preapplication will be removed from the ranking list. The priority point score is no longer utilized or has any significance.

(2) If appropriate, a copy of the AD–622 and related information should be forwarded to the state agency which administers tax credits.

(3) The District Director will establish specific deadlines for developing the proposal to avoid unreasonable delays by applicants not prepared to proceed. In addition, the following paragraphs should be contained on or attached to Form AD–622, as appropriate:

(i) "The action taken herein is based upon representations made in your preapplication. Any changes therein, including but not limited to changes in complex cost, size or scope of complex, rental rates or subsidy costs to FmHA, scope of services, sources of funds, etc., may adversely affect this decision and must be reported to and approved by FmHA in writing. Any changes not approved by FmHA will be cause for FmHA to discontinue processing your request for services. All applicants requesting changes will be required to give full justification for each change and, if FmHA approval is not given, written reasons will be given with a 30-day negotiation period to resolve the differences."

(ii) "This action should not be misconstrued as a reservation of funds, the availability of funds or loan approval."

(iii) "Loan processing will continue based upon a loan not to exceed the amount specified on Form AD–622."

(iv) "If a complete application has not been submitted to FmHA by the date specified on Form AD–622, FmHA reserves the right to discontinue processing your loan request with 30 days written notice. Such inaction will be considered a lack of interest on your part and a request to withdraw the preapplication. Continued processing will require a new preapplication which must be rated and ranked without regard to previous processing priority."

(v) In cases which do not require National Office review, the following statement must be added: "You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered, or which would have an adverse affect on the environment. Satisfactory completion of the environmental review process in accordance with Subpart G of Part 1940 of this chapter must occur prior to loan approval. The issuance of this review action does not constitute site approval."

(j) *Information to be contained in preapplication case file.* At a minimum, the following information will be contained in the case file before submission to the State or National Office for authorization.

(1) SF 424.2.

(2) All information outlined in Exhibit A–7 of this subpart.

(3) The District Director's comments on eligibility and his/her recommendations, and in cases reviewed by the State Director, his/her comments on eligibility and recommendations.

(4) Comments and recommendations concerning the proposed complex site resulting from an on-site visit to determine its overall desirability and conformance with the site location requirements outlined in § 1944.215(r) of this subpart.

(5) A current copy of Form FmHA 1905–11.

(6) The following information when the loan request exceeds the State Director's approval authority, National Office authorization is required, or when appropriate. State Offices will forward such files to the National Office, ATTN: Multi-Family Housing Processing Division (MFH/PD).

(i) Original and one copy of Form FmHA 1940–21, "Environmental Assessment for Class 1 Action," or Exhibit H of subpart G of part 1940 of this chapter, signed by all required parties, dependent on whether the assessment is a Class I or Class II action. A copy of the published "Finding of No Significant Impact" (FONSI) (or affidavit from the publisher) will also be included together with any comments and consideration of same.

(ii) The schematic or preliminary drawings and specifications, together with the architectural comments and recommendations of the State Architect.

(k) *General guidance on processing requests for MFH assistance*—(1) *Equal Credit Opportunity Act.* (i) *Act.* The Federal Equal Credit Opportunity Act (ECOA) prohibits creditors from discriminating in credit based on sex, familial status, race, color, religion, national origin, age (provided the applicant has the capacity to contract), because all or part of the applicant's income is derived from public assistance of any kind, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

(ii) The ECOA paragraph set forth in paragraph (k)(1)(i) of this section will be included in all written notifications of adverse actions.

(2) Form FmHA 410–9, "Statement Requirements by the Privacy Act," is required by all applicants who are individuals. A preapplication/application will not be considered complete without this form.

(3) Form FmHA 410–7, "Notification to Applicant on Use of Financial Information from Financial Institution," will be provided by FmHA within 3 working days of receipt of a complete preapplication if financial information will be requested directly from any financial institution.

(4) All applicants must provide their taxpayer identification number. The taxpayer identification number for individuals who are not businesses is their Social Security Number.

(5) For all loans and credit sales secured by a first mortgage and involving the purchase of an existing 1 to 4 family unit, or purchase of a building site and construction of 1 to 4 residential units, the booklet entitled "Settlement Costs" will be given or sent to the applicant within 3 business days after receipt of a complete preapplication. The booklet will include Form FmHA 440–58, "Estimate of Settlement Costs." A record of the date and method of delivery of the booklet and form will be placed in the case file.

(6) A preapplication/application for MFH assistance may be withdrawn upon written request of an applicant at any time. FmHA may withdraw a preapplication/application for failure of an applicant to provide necessary information to process a request for assistance provided the applicant fails to respond to a written request which provides the applicant with a reasonable time period to submit the information. The letter informing the applicant of the necessary information will contain the following, or essentially similar, statement: "If you fail to provide FmHA with this information within ____ days from the date of this letter, we will assume this lack of response on your part to be an indication that you wish to have your application withdrawn. Continued processing will require a new preapplication which must be rated and ranked without regard to previous processing priority." If the applicant fails to respond to the request within the specified timeframe, a letter should then be sent to the applicant indicating their preapplication has been withdrawn. Review and/or appeal rights need not be given. Both letters will be sent by certified mail, return receipt requested.

§ 1944.232 Rental assistance (RA) from sources other than FmHA.

RA from sources other than FmHA may be used in new or existing RRH complexes. Private RA may be provided to tenants without FmHA consent; however, to receive any consideration for priority processing points, the proposal must receive National Office authorization. FmHA will only consider authorizing private RA proposals which offer RA in the same dollar amount and terms in which FmHA RA is calculated and granted. Private RA proposals will be in the form of a memorandum of understanding between the provider and FmHA.

(a) *Provisions of memorandum of understanding.* FmHA may consider entering into a memorandum of understanding with other providers of RA such as state or local public entities, profit or nonprofit organizations, individuals or other providers acceptable to FmHA. The memorandum of understanding will be executed between FmHA and the provider prior to the appropriate official issuing Form AD–622 for new projects. At a minimum, the memorandum of understanding must contain the following provisions:

(1) Reason for providing private RA and its intended purpose.

(2) The length of time RA will be provided.

(3) Actions to be taken at the end of the private RA proposal to minimize impact on tenants losing private RA and avoid displacement.

(4) A copy of the proposed RA agreement, which is the instrument of agreement involving the tenant, owner and provider of assistance. FmHA will not be a party to the private RA agreement nor have any responsibilities under the agreement. The private RA agreement must state that:

(i) The payments should be paid directly to the tenants or the owner, who must advise the tenants of the amount and source of the assistance through the lease or a supplement to the lease.

(ii) Sufficient funds will be set aside in a way that assures availability of private RA for the life of the RA agreement, which must be for a minimum of 5 years. The method of supplying the funds must be clearly set forth and acceptable to FmHA.

(b) *Documentation.* Documentation must be provided that the private RA is needed in the market area. In addition, the provider must also provide FmHA with reasonable assurances that tenants receiving the private RA will not be displaced when the private RA expires. This information, the memorandum of understanding, and the RA agreement

will be submitted to the District Office for review. If acceptable, the District Office will submit the proposal for similar review to the State Office and submission to the National Office. Proposals forwarded to the National Office will contain the recommendations of the District and State Director.

Dated: July 30, 1991.

LaVerne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-25909 Filed 10-30-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 91-AWA-8]

Proposed Alteration of Jet Route J-559 and Establishment of Jet Route J-488; NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J-559 and establish Jet Route J-488 located in the State of New York and Canada. This action is requested by the Canadian Government to simplify the routings and facilitate the flow of air traffic in the Ottawa terminal airspace. This proposal would improve the operations of transborder flights.

DATES: Comments must be received on or before December 16, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AEA-500, Docket No. 91-AWA-8, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AWA-8."

The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being place on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter the description of J-559 and establish J-488. This proposal would realign J-559 between Syracuse, NY, Watertown, NY, and Ottawa, Ontario, Canada. This proposal would also establish J-488 between Watertown, NY, and the Uplands non-directional beacon (NDB), Ontario, Canada. The realignment of J-559 would simplify the routings and expedite the flow of air traffic ingress/egress to the Ottawa terminal airspace. The establishment of J-488 would assist air traffic control procedures in that area.

Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) as follows:

PART 75--ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J–559 [Revised]

From Syracuse, NY; Watertown, NY; to Ottawa, Ontario, Canada, excluding the airspace within Canada.

J–488 [New]

From Watertown, NY; to Uplands NDB, Ontario, Canada, excluding the airspace within Canada.

Issued in Washington, DC, on October 24, 1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91–26234 Filed 10–30–91; 8:45 am]

BILLING CODE 4910–13–M

Notices

Federal Register
Vol. 56, No. 211
Thursday, October 31, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Request Under Review

AGENCY: ACTION.

ACTION: This notice sets forth certain information about an information collection proposal by ACTION, the Federal domestic volunteer agency.

SUMMARY: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents (requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents) may be obtained form the agency clearance officer. ACTION is requesting an expedited review by OMB with final action as soon as possible, given that the closing date for nominations to be submitted is January 10, 1992.

DATES: OMB and ACTION will consider comments received by 5 days from the date of publication. Comments are to be directed to both of the following addresses:

Janet Smith, ACTION Clearance Officer, ACTION, 1100 Vermont Ave., NW., Washington, DC 20525, tel. (202) 634–9245.

Daniel Chenok, Desk Office for ACTION, Office of Management and Budget, 3200 New Executive Office Bldg., Washington, DC 20503, tel. (202) 395–7316.

SUPPLEMENTARY INFORMATION:

Office of Action Issuing Proposal: Office of the Director.

Title of Forms: President's Annual Points of Light Award.

Need and Use: The nomination form is used to determine winners of the President's Annual Points of Light Award, which replaces the previous President's Volunteer Action Award. The Award is given out to individuals and organizations that have demonstrated outstanding volunteer service over the past year.

Type of Request: Revision.

Frequency of Collection: Annually.

Estimated Number of Responses: 3,500.

Estimated Annual Reporting of Disclosure Burden: 7,000 hours.

Dated: October 25, 1991.

Janet Smith,

Clearance Officer, ACTION.

[FR Doc. 91–26181 Filed 10–30–91; 8:45 am]

BILLING CODE 6050–28–M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review and Committee on Regulation; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Judicial Review and the Committee on Regulation of the Administrative Conference of the United States.

Committee on Judicial Review

Date: November 7, 1991.

Time: 9:30 a.m.

Location: Administrative Conference of the United States (Library), 2120 L Street, NW., suite 500, Washington, DC.

Agenda: The committee will meet for further discussion of a draft recommendation on the creation of specialized courts based on a report by Professor Harold H. Bruff, University of Texas.

Contact: Mary Candace Fowler, 202–254–7020.

Committee on Regulation

Date: Friday, November 15, 1991.

Time: 9:15 a.m.-11:45 a.m.

Location: Administrative Conference of the United States (Library), 2120 L Street, NW., suite 500, Washington, DC.

Agenda: The committee will meet for further discussion and possible recommendations concerning federal noise abatement regulation. A draft report on this subject was prepared for the Administrative Conference by Professor Sidney A. Shapiro, University of Kansas School of Law, and Dr. Alice Suter, Alice Suter and Associates, Cincinnati, Ohio.

Contact: David M. Pritzker, 202–254–7020.

Committee on Regulation

Date: Friday, November 15, 1991.

Time: 2 p.m.-4:30 p.m.

Location: Administrative Conference of the United States (Library), 2120 L Street, NW., suite 500, Washington, DC.

Agenda: The committee will meet to continue discussion of possible recommendations on procedures in antidumping and countervailing duty cases, based on a study by Professors John H. Jackson, University of Michigan Law School, and William J. Davey, University of Illinois at Urbana-Champaign.

Contact: David M. Pritzker, 202–254–7020.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance of the meeting. The committee chairmen may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037.

Dated: October 29, 1991.

Michael W. Bowers,

Deputy Research Director.

[FR Doc. 91–26423 Filed 10–30–91; 8:45 am]

BILLING CODE 6110–01–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Architectural and Transportation Barriers Compliance Board; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB or Access Board) has scheduled its regular business meetings to take place in Orlando, Florida on Tuesday and Wednesday, November 12–13, 1991 at the times and locations noted below. The Board has also scheduled a public forum on Wednesday, November 13, 1991 at the

Stouffer Orlando Resort, 6677 Sea Harbor Drive, Orlando, Florida.

DATES: The schedule of events is as follows:

Tuesday, November 12, 1991

Location: The Peabody Orlando, 9801 International Drive, Orlando, Florida.
8:30–10 am—Title II Review.
10:30–11:30 am—Technical Programs Committee.
1–2 pm—Public Affairs Committee.
2:30–3:30 pm—Planning and Budget Committee.
3:30–4:30 pm—Executive Committee.

Wednesday, November 13, 1991

Location: Stouffer Orlando Resort, 6677 Sea Harbor Drive, Orlando, Florida.
9–12 pm—Public Forum.
1:30–3:30 pm—Business Meeting.

MATTERS TO BE CONSIDERED: At the Public Forum, Board members will provide a brief overview of the final Americans with Disabilities guidelines and standards recently issued by the Board, the Department of Justice and the Department of Transportation. Then, members would like to hear from the public about any of the following subjects:

Most ADA standards will take effect in January 1992, after which these provisions must be used in new construction and alterations.

- General comments on developing accessibility guidelines for recreation.
- What issues or problems will arise in using the standards?
- How can the Board help to make this a successful effort?

Other issues

At this business meeting, the Board will consider the following Agenda Items:

- Approval of the September 25, and January 8, 1991 Board meeting minutes.
- Committee Reports.
- Federal Register Notice regarding ADAAG corrections.
- ADA Training and Policy for Charging.
- Procedures for Consulting with DOJ on Code Certification.
- Responding to ADAAG Written Requests.
- Title II ADAAG Development.
- Goals and Objectives.
- Complaint Status Report.
- Election of Officers.

FOR FURTHER INFORMATION CONTACT: For further information regarding the business meetings, please contact Barbara A. Gilley, Executive Office, (202) 653–7834 (voice/TDD). For further information regarding the Public Forum, please contact Larry Allison, Special Assistant for External Affairs, (202) 653–7834 (voice/TDD).

SUPPLEMENTARY INFORMATION: Some meetings may be closed to the public. All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee, Jr.,

Executive Director.

[FR Doc. 91–26182 Filed 10–30–91; 8:45 am]

BILLING CODE 8150–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 25, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Extension

- Agricultural Marketing Service

Poultry Market News Reports
PY–10, PY–17, PY–88, PY–90
Weekly; Monthly.
Businesses or other for-profit; Small businesses or organizations; 55,932 responses; 2,242 hours.
Floyd D. Blethen, (202) 447–6911.

New Collection

- Animal and Plant Health Inspection Service

Animal Welfare—Addendum 1
Recordkeeping
State or local governments; Businesses or other for-profit; Small businesses or organizations; 0 responses; 130,500 hours.
Robert Hogan, (301) 436–7833.

- Food and Nutrition Service

7 CFR part 226—Child and Adult Care Food Program (Addendum 2)
On occasion; Quarterly; Biennially.
State or local government; businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 220,658 responses; 64,420 hours.
Winnie McQueen, (703) 756–3607.

- Farmers Home Administration

7 CFR 1942-B, Rural Emergency Assistance Loans.
Recordkeeping; On occasion.
State or local government; Businesses or other for-profit; non-profit institutions; Small businesses or organizations; 1,170 responses; 5,435 hours.
Jack Holston, (202) 382–9736.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 91–26278 Filed 10–30–91; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee; Classification/Confinement Working Group

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following meeting of a working group of the Agricultural Biotechnology Research Advisory Committee (ABRAC).

The Classification/Confinement Working Group will meet in Boardroom 105, Governor's House Holiday Inn, Rhode Island Avenue and 17th Street NW., Washington, DC, 20036, on December 2, 1991, from 9 a.m. to approximately 5 p.m. to discuss the classification and confinement of organisms with deliberately modified hereditary traits used in agricultural biotechnology research.

This meeting is open to the public. Persons may participate in the meeting as time and space permit. The public may file written comments before or after the meeting with the contact person below.

Further information may be obtained from Dr. Alvin L. Young, Director, or Dr. Daniel D. Jones, Deputy Director, Office of Agricultural Biotechnology, Cooperative State Research Service, Department of Agriculture, room 1001, Rosslyn Plaza East, 14th Street and

Independence Avenue SW. Washington, DC. 20250. Telephone (703) 235–4419.

Done at Washington, DC, this 22nd day of October, 1991.

C. Michael Hoback,

Executive Assistant to the Assistant Secretary, Science and Education.

[FR Doc. 91–26279 Filed 10–30–91; 8:45 am]

BILLING CODE 3410–22–M

Agricultural Biotechnology Research Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. No. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following advisory committee meeting:

Name: Agricultural Biotechnology Research Advisory Committee

Date: December 3–4, 1991.

Time: 9 a.m. to approximately 5 p.m. on December 3; 9 a.m. to approximately 3 p.m. on December 4.

Place: Cabinet Room, Governor's House Holiday Inn, Rhode Island Avenue and 17th Street NW., Washington, DC 20036.

Time of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person specified below.

Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Assistant Secretary for Science and Education with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research. The major items to be considered at this meeting are the "proposed Guidelines for Research Involving the Planned Introduction into the Environment of Organisms With Deliberately Modified Hereditary Traits," published at 56 FR 4134, February 1, 1991, [hereinafter referred to as the Proposed Guidelines], implementation of the Proposed Guidelines, and reports of working group deliberations.

Contact Persons: Dr. Alvin L. Young, Director, or Dr. Daniel D. Jones, Deputy Director, Office of Agricultural Biotechnology, Cooperative State Research Service, Department of Agriculture, room 1001, Rosslyn Plaza East, 14th Street and Independence Avenue SW., Washington, DC 20250. Telephone (703) 235–4419.

Done at Washington, DC, this 22nd day of October, 1991.

C. Michael Hoback,

Executive Assistant to the Assistant Secretary, Science and Education.

[FR Doc. 91–26280 Filed 10–30–91; 8:45 am]

BILLING CODE 3410–22–M

Rural Telephone Bank

Amendments to Bylaws

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of revised bylaws.

SUMMARY: The Rural Telephone Bank Board adopted amendments on May 1, 1991, and August 7, 1991, to the bylaws of the Rural Telephone Bank primarily to conform such bylaws with the amendments to the Rural Electrification Act of 1936 approved on November 28, 1990 (U.S.C. 901–950b).

EFFECTIVE DATE: This action was effective August 7, 1991.

FOR FURTHER INFORMATION CONTACT: Blaine D. Stockton, Jr., Assistant Secretary, Rural Telephone Bank, room 4025-South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–9552.

Generally the bylaw amendments adopted will:

1. Restrict the issuance of a certificate for shares associated with a specific loan until the end of each fiscal year-Sec. 2.3(d);

2. Provide for the date for determination of stockholders entitled to notice of and to vote in any election of Directors-Sec. 2.5;

3. Provide for the classification of stockholders before any election of Directors-Sec. 2.8;

4. Provide for regular meetings of the stockholders in November of each even-numbered year-Sec. 3.1;

5. Transfer the authority to call special meetings of the stockholders from the Governor to the Chairperson of the Board-Sec. 3.2;

6. Provide that written notice of all meetings of stockholders be published in the **Federal Register**-Sec. 3.3;

7. Lift the restriction on the number of proxies a voting representative may vote at a single stockholders meeting-Sec. 3.6(a);

8. Prohibit proxy voting in the election of Directors-Sec. 3.6(b);

9. Limit the authority to designate the voting representative or the holder of a proxy to the stockholder's chief executive officer, president, or vice president-Sec. 3.7(a);

10. Increase the number of Board members designated by the President of the United States from five to seven-Sec. 4.2;

11. Change the voting procedure for electing Directors from non-secret to secret votes-Sec. 4.3(a);

12. Provide that each election of Directors shall not be considered valid unless a majority of the stockholders eligible to vote in the election have voted in the election-Sec. 4.3(b) and (c);

13. Provide that the Chairperson shall call a special meeting of the Board to determine the procedures to be followed in the event of a tie vote in the election of Directors-Sec. 4.3(d);

14. Extend the time limit stockholders have to submit their nominations for candidates in an election of Directors from sixty days to three months-Sec. 4.4(a);

15. Permit stockholders to write in names on the official ballot as candidates for positions on the Board-Sec. 4.4(b);

16. Provide that the Secretary shall be responsible for mailing a statement of the number of Board members to be elected by the stockholders, a biographical sketch of each candidate for the Board, and the official ballot to be used by the stockholder-Sec. 4.4(c);

17. Provide that the authorized voting representative of each stockholder shall vote by mail ballot for the election of Directors—Sec. 4.4(d);

18. Provide that Directors shall serve after expiration of the term of office of such member until the successor for such member has taken office-Sec. 4.4(e);

19. Provide that any nominating form or official ballot placed in the mail by the Bank in Washington, DC, addressed with the address appearing in the official records of the Bank, shall be properly mailed in satisfaction of the requirements of these bylaws-Sec. 4.4(f);

20. Provide for Board members to be compensated $100 per day for each day or part thereof, not to exceed fifty days per year, and shall be reimbursed by the Bank for travel and other expenses in such manner and subject to such limitations as the Board may prescribe-Sec. 4.6;

21. Provide that in an election year a regular meeting of the Board be held no more than 45 days after the date of such election of Directors-Sec. 5.1;

22. Transfer the authority to call special meetings of the Board from the Governor to the Chairperson-Sec. 5.2(a);

23. Provide for special meetings of the Board on less than ten days notice-Sec. 5.2(b);

24. Provide that notices of any meeting may be delivered by facsimile to each Director and all such notices will be published in the **Federal Register**-Sec. 5.3;

25. Provide that all meetings of the Board comply with the Government in the Sunshine Act-Sec. 5.4 and 5.5;

26. Provide for a Chairperson and Vice Chairperson of the Board and remove the Governor of the bank as an officer of the Board-Sec. 6.1 and 6.2;

27. Provide that officers of the Board of Directors shall hold office until the first meeting of the Board following the election of Directors-Sec. 6.2;

28. Set forth the responsibilities of the Chairperson and the Vice Chairperson-Sec. 6.4;

29. Set forth the Governor's responsibilities as chief executive officer of the Bank-Sec. 6.7;

30. Provide that all meetings be conducted in accordance with Roberts' Rules of Order except as such rules may be inconsistent with the RE Act or these bylaws-Sec. 9.5; and

31. Provide that stockholders be notified immediately of any amendments to these bylaws-Article X.

The bylaws are revised as follows: Bylaws of Rural Telephone Bank with amendments adopted through August 7, 1991.

Article I—Name, Organization, Purposes and Location

Sec. 1.1 Name, Organization, and Purposes. The name of the body corporate by and for which these bylaws are adopted is Rural Telephone Bank (hereinafter called the Bank). It is an agency and instrumentality of the United States, established by the Act of May 7, 1971, 85 Stat. 29, 7 U.S.C. 931–950(b), (hereinafter called the Act), for the general purposes of obtaining an adequate supply of supplemental funds to the extent feasible from non-Federal sources, to utilize said funds in the making of loans pursuant to the Act, and to conduct its operations to the extent practicable on a self-sustaining basis.

Sec. 1.2 Location of Offices. The Bank shall have an office in the District of Columbia, and additional offices at such other places as the Governor, with the concurrence of the Board of Directors of the Bank (hereinafter called the Board), may from time to time designate.

Article II—Capital Stock and Special Fund Equivalents

Sec. 2.1 Classes of Stock. The capital stock of the bank shall consist of three classes, to wit, Class A, Class B, and Class C.

Sec. 2.2 Rights, Powers, Privileges and Preferences of Each Class of Stock. (a) Class A stock shall have a par value of one dollar ($1.00) per share and shall be issued only at par and only to the Administrator of the Rural Electrification Administration (hereinafter called the Administrator) on behalf of the United States for capital furnished to the Bank by the United States as provided in section 406(a) of the Act, and shall be non-voting stock. Such stock shall be entitled to a cumulative return, payable from the bank's income, at the rate of two per centum (2%) per annum. Such stock shall be redeemed and retired in such amounts and at such times as provided in section 406(c) of the Act. Upon dissolution or liquidation of the Bank, Class A stock shall be retired at par before any payment is made to holders of Class B or Class C stock, and the holder of Class A stock shall be entitled to share pro rata with the holders of Class B stock then outstanding in the surpluses and contingency reserves remaining after the payment of all the Bank's liabilities and after retirement of all classes of stock at par as provided in section 411 of the Act. Class A stock shall not be transferable.

(b) Class B stock shall have a par value of one dollar ($1.00) per share, shall be issued only at par, shall be held only by the recipients of loans made under section 408 of the Act, and shall be voting stock. No dividends shall be payable on Class B stock, but the holders thereof shall be entitled to patronage refunds in Class B stock as hereinafter provided. Prior to dissolution or liquidation of the Bank Class B stock may be redeemed and retired only after all shares of Class A stock shall have been redeemed and retired: *Provided, however,* That the Board may, under rules of general application adopted by it and upon agreement with the stockholder, provide for the conversion of Class B stock into Class C stock upon payment of amounts owed by a holder of Class B stock to the Bank and upon surrender of sufficient shares of Class B stock, supplemented by cash if necessary, to equal the par value of each share of Class C stock to be issued inasmuch as fractional shares of Class C stock shall not be issued. Upon dissolution or liquidation of the Bank, holders of Class B stock shall be entitled to share pro rata with the holder of Class A stock then outstanding in the surpluses and contingency reserves remaining after the payment of all of the Bank's liabilities and after retirement of all classes of stock at par as provided in section 411 of the Act. Class B stock shall not be transferable, either absolutely or by way of collateral, except in connection with the assumption by the transferee, with the approval of the Governor, of all or part of the transferor's loan from the Bank.

(c) Class C stock shall have a par value of one thousand dollars ($1,000) per share, shall be issued only at par, shall be held only by borrowers or by corporations and public bodies eligible to borrow under section 408 of the Act, or by organizations controlled by such borrowers, corporations and public bodies and shall be voting stock. At such times and in such amounts as the Board may designated, dividends may be declared and paid to holder of Class C stock, but only from income of the Bank. Until all Class A stock is retired, the annual rate of any such dividend shall not exceed the current average rate payable on the bonds, debentures, notes and other evidences of indebtedness issued by the bank (hereinafter collectively called telephone debentures). No dividend on Class C stock shall be paid at any time when any portion of the cumulative 2 percent return on Class A stock required by section 406(c) of the Act remains unpaid. Prior to dissolution or liquidation of the Bank, Class C stock may be redeemed and retired only after all shares of Class A stock shall have been redeemed and retired. Upon dissolution or liquidation of the Bank, holder so Class C stock shall be entitled to retirement of their stock at par after payment of all liabilities of the Bank and after retirement of all Class A and Class B stock at par, but shall not be entitled to share in any remaining surpluses or contingency reserves, as provided in section 411 of the Act. Class C stock shall not be transferable, absolutely or by way of collateral, except to a borrowers, or a corporation or public body eligible to borrower under section 408 of the Act, or an organization controlled by such borrowers, corporations, or public bodies.

(d) No holder of Class B or Class C stock shall be entitled to more than one vote, regardless of the number and class or classes of shares held, nor shall Class B and Class C stockholders, regardless of their number, which are owned or controlled by the same person, group or persons, firm, association, or corporation be entitled to more than one vote.

Sec. 2.3 Share Certificates. (a) The Bank shall issue certificates evidencing the purchase of shares of stock of the Bank but only upon payment in full of the par value thereof. The Bank shall also issue certificates evidencing distribution of patronage refunds as hereinafter provided. The certificates for Class A stock shall be in such form, satisfactory to the Administrator, as may be prescribed by the Board from time to time. Certificates for Class B and Class C stock shall be in such form as the Board may from time to time prescribe. The certificates shall be signed by the Governor and attested by the Secretary of the Bank. No certificate shall be valid unless it is signed as herein provided. The Bank shall act as its own transfer agent or registrar.

(b) All certificates of each class shall be consecutively numbered. The name of the entity owning the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the Bank's books. All certificates surrendered to the Bank for transfer or conversion shall be canceled, and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except that in the case of a lost, destroyed or mutilated certificate, a new one may be issued therefor upon such terms and indemnity to the Bank as the Board may prescribe.

(c) Notwithstanding other provisions in these bylaws, however, the Board may authorize the use of book entry system for stock and issue certificates only on the specific request of the stockholder.

(d) The Board may also, notwithstanding other bylaw provisions, restrict the issuance of a certificate for shares associated with a specific loan until the end of each fiscal year.

Sec. 2.4 Transfer of Shares. Shares in the capital stock of the Bank shall be transferred only on the books of the Bank by authorization from the holder thereof or by his legal representative upon proof of his authority filed with the Secretary of the Bank, and on surrender for cancellation of such shares. The entity in whose name shares stand on the books of the Bank shall be deemed to be the owner thereof for all purposes.

Sec. 2.5 Date for Determination of Stockholders' Rights. The Board may fix a date, not exceeding four (4) months preceding the date of any meeting of stockholders or any election of Directors, any dividend payment date or any date for the determination or allotment of rights, as a record date for the determination of stockholders entitled to notice of and to vote at such meeting or in such election, or entitled to receive such dividend or rights as the case may be.

Sec. 2.6 Special fund Equivalents. The amounts to be paid by any entity into the special fund provided for in section 406(f) of the Act and the rights, powers, privileges and preferences in respect of dividends, patronage refunds, voting rights, transfer of interest, retirement of special fund equivalent and liquidation or dissolution of the Bank accruing to an entity making such a payment, shall, to the extent permitted under the laws of the jurisdiction in which such entity is organized, be determined as if such entity had purchased stock in the Bank for such payment. The Bank shall issue to such entity written evidence, in such form as the Board may from time to time prescribe, of the payment made by such entity into the Bank's special fund established pursuant to said section 406(f) of the Act. Such writing shall comply, in respect of its execution, numbering and the surrender of such writing and the issuance of share certificates or other evidence of payment into the special fund in lieu of the surrendered evidence, with the provisions of section 2.3 above. Evidences of payment into said special fund shall be transferred in the manner provided in section 2.4 above for the transfer of shares of stock. The provisions of section 2.5 above shall also be applicable in respect of such evidences of payment. Each reference in these bylaws to capital stock or to Class B or Class C stock and to stockholders shall, subject to the first sentence of this section 2.6 be deemed to include evidences, or holders of evidences, of payment into the special fund in lieu of purchase of the class of stock to which reference is made.

Sec. 2.7 Commonly Owned or Controlled Stockholders. Each reference in these bylaws to the voting rights of stockholders, shall, in respect of stockholders which are owned or controlled by the same person, group of persons, firm, association, or corporation (7 U.S.C. 946(b)) be deemed to mean that the right is vested and is to be exercised as if all such stockholders owned or controlled by the same person, group of persons, firm, association or corporation were one stockholder.

Sec. 2.8 Classification of Stockholders. At least one month before any meeting of stockholders or any election of Directors, the Governor shall prepare a list of all stockholders, classified on the books of the Rural Electrification Administration as either cooperative-type or commercial-type entities and organizations, which are entitled to vote, indicating thereon those which are required to share their vote with other commonly owned or controlled stockholders in a designated affiliated group. A copy of the list shall be available for inspection and copying at the offices of the Rural telephone Bank and the Rural Electrification Administration in Washington, DC.

Article III—Meetings of Stockholders

Sec. 3.1 Regular Meeting. A regular meeting of the stockholders shall be held in November of each even-numbered year on such day and at such place and time as may be selected by the Board, for the purpose of (a) hearing reports from officers of the Bank, and (b) acting upon such other matters as may properly be brought before the meeting.

Sec. 3.2 Special Meetings. Special meetings of the stockholders may be called by the Chairperson of the Board, by resolution of the Board, upon a written request signed by seven (7) members of the Board, or by not less than fifty (50) stockholders, subject to section 2.7. It shall be the duty of the Secretary to promptly cause notice of such meeting to be given as hereinafter provided. Special meetings may be held at any place designated by the person or persons calling the meeting.

Sec. 3.3 Notice. Written or printed notice stating the place, day and hour of the meeting, and the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days nor more than forty (40) days before the date of the meeting, either personally or by mail, by or at the direction of the Secretary, or upon default by the Secretary, by the entities calling the meeting, to each stockholder and published in the **Federal Register**. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the stockholer's address as it appears on the records of the Bank with postage thereon prepaid. The failure of any stockholder to receive notice of a meeting of stockholders shall not invalidate any action which may be taken by the stockholders at any such meeting.

Sec. 3.4 Quorum. The quorum for a meeting of the stockholders shall consist of one hundred (100) stockholders present in person or by proxy. All members of a commonly owned or controlled affiliated group as set forth in section 2.7 shall be considered as one stockholder for quorum as well as voting purposes. If less than a quorum is present at any meeting, a majority of those present in person or by proxy may adjourn the meeting from time to time without further notice. Stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. A stockholder shall be considered as being present in person or by proxy if the individual designated as its voting representative pursuant to section 3.7(a), is present.

Sec. 3.5 Voting. Each stockholder entitled to vote shall be entitled to only one vote upon each matter submitted to a vote at a meeting of stockholders. All questions submitted to a vote of stockholders shall be decided by a vote of a majority of the stockholders voting thereon present in person or by proxy.

Sec. 3.6 Proxies. (a) Subject to sections 2.7 and 3.7(a), at all meetings of

stockholders, a stockholder may vote by proxy executed in writing by the stockholder. Such proxy shall be filed with the Secretary before or at the time of the meeting. No proxy shall be voted at any meeting of stockholders unless it shall designate the particular meeting at which it is to be voted, and no proxy shall be voted at any meeting other than the one so designated or any adjournment of such meeting. Any stockholder which has granted a proxy may vote in person through the individual designated as its voting representative pursuant to section 3.7(a) and such vote shall revoke the proxy theretofore given and shall have the same effect as if the proxy shall not have been executed. A proxy may only be voted by a voting representative of another stockholder in the same segment of the industry as the grantor of the proxy. Public bodies, for the purpose of these bylaws, shall be considered part of the cooperative segment.

(b) Proxy voting is prohibited in the election of Directors.

Sec. 3.7 Voting of Shares By Certain Holders. (a) Shares standing in the name of a corporation, public body, or other organization may be voted by the director, manager, or other employee of the stockholder authorized by the chief executive officer, president, or vice president of such organization to be its voting representative or by the holder of a proxy as set forth in section 3.6.

(b) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by him without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

(c) A stockholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Article IV—Directors

Sec. 4.1 Powers. Except to the extent otherwise required by law or by these bylaws, the management of the Bank shall be vested in the Board.

Sec. 4.2 Number. Until ownership, control and operation of the Bank has been converted pursuant to section 410(a) of the Act, the Board shall consist of seven members designated by the President of the United States (five of whom shall be officers or employees of the United States Department of Agriculture but not REA, and two of whom shall be from the general public and not officers or employees of the United States) and six additional members elected by the holders of Class B and Class C stock.

Sec. 4.3 Election. (a) Six members of the Board shall be elected by a secret vote by holders of Class B and Class C stock, voting noncumulatively as follows: (1) Three by a plurality vote of stockholders voting in the cooperative segment of the industry, from among the directors, managers, and other employees of cooperative-type entities and organizations controlled by them holding Class B or Class C stock, and (2) three by a plurality vote of stockholders voting in the commercial segment of the industry, from among the directors, managers, and other employees of commercial-type entities and organizations controlled by them holding Class B or Class C stock. Ballots cast for the election of the Directors as established in section 405(b)(2) and (3) of the Act shall be counted on such day in February of 1992 as the Board may select. Thereafter, ballots shall be cast biennially for the election of Directors and counted on such day in November of each even-numbered year as the Board may select after 1992.

(b) Each election under paragraph (a)(1) or (a)(2) of this section shall not be considered valid unless a majority of the stockholders eligible to vote in the election have voted in the election.

(c) Upon a determination by the Assistant Secretary that ballots were received from less than a majority of eligible voters in one or both of the two segments of the industry, the Chairperson shall call a special meeting of the Board to determine the procedures to be followed for a new election for the segment or segments involved.

(d) In the event of a tie vote, the Chairperson shall call a special meeting of the Board to determine the procedures to be followed to break a tie vote.

Sec. 4.4 Nominations and Tenure. (a) At least three (3) months before the tabulation of ballots for the election of Directors, the Secretary shall send a form to each holder of Class B or Class C stock which may be used to nominate not more than three eligible individuals as defined in section 4.3(a) above. Any form nominating Directors received by the Assistant Secretary of the Rural Telephone Bank within the time limit established by the Board shall be opened and tabulated by tellers nominated by the Governor and approved by the Board.

(b) All eligible individuals receiving at least ten (10) nominations by cooperative-type stockholders shall be entered on the official ballot as candidates for the three positions on the Board allocated to the cooperative segment of the industry. All eligible individuals receiving at least ten (10) nominations by commercial-type stockholders shall be entered on the official ballot as candidates for the three positions on the Board allocated to the commercial segment of the industry. The only nominees eligible for inclusion on the official ballot as candidates are those certified by the Secretary as having been nominated in accordance with the provisions in this subsection and section 4.3(a) above, however, write-in candidates are permitted on the official ballot which will contain blank spaces for writing in the names of three additional candidates.

(c) The Secretary shall be responsible for mailing, at least three (3) weeks before the date for tabulation of ballots, a statement of the number of Board members to be elected by the stockholders in each segment of the industry, a biographical sketch of each candidate for the Board, and the official ballot to be used by the stockholder. Each ballot shall show the name and the position of each candidate in the candidate's stockholder's organization.

(d) The authorized voting representative of each stockholder shall vote by mail ballot and shall be entitled to cast one vote for one candidate for each position for which that stockholder is eligible to vote. The authorized voting representative may be a Director, manager, or other employee of the stockholder authorized by the chief executive officer, president, or vice president of such organization. Any mail ballot received by the Assistant Secretary of the Bank by close of business on the day before the day the ballots are to be counted shall be opened and tabulated by tellers nominated by the Governor and approved by the Board. The Assistant Secretary shall deliver the unopened ballots to the head teller to be opened and tabulated.

(e) Directors shall be elected for two (2) years but they shall serve after expiration of the term of office of such member until the successor for such member has taken office. Upon the establishment of the fact that a Director, at the time of his election, did not, or has since ceased to, have the qualifications required by these bylaws or the Act, the Board shall remove such Director from office.

(f) Any nominating form or official ballot placed in the mail by the Bank in Washington, DC, addressed with the address appearing in the official records of the Bank and with postage fully paid,

shall be considered properly mailed in satisfaction of the requirements of these bylaws.

Sec. 4.5 Vacancies. Any vacancy occurring on the Board shall be filled by the affirmative vote of the remaining Board members for the unexpired portion of the term; *Provided, however,* That the person selected by the Board to fill a vacancy shall be chosen from among the same group (cooperative-type or commercial-type) of individuals that elected his predecessor on the Board; *And provided, further,* That the Board shall have no power to choose a successor to a Director appointed by the President of the United States.

Sec. 4.6 Compensation. Board members designated from the general public, pursuant to section 405(b)(1)(B) of the Act, or elected pursuant to section 405(b)(2) or (3) of the Act, shall receive one hundred dollars ($100) per day for each day or part thereof, not to exceed fifty days per year, spent in the performance of official duties for the Bank, and shall be reimbursed by the Bank for travel and other expenses in such manner and subject to such limitations as the Board may prescribe. Directors who are officers or employees of the Department of Agriculture shall serve as directors without additional compensation. No close relative of a Board member shall receive compensation for serving the Bank unless the relationship shall have been fully disclosed to the Board prior to his employment and the Board shall have determined that his employment will be beneficial to the Bank.

Sec. 4.7 Board Committees. The Board may, from time to time, provide for such committees as it deems desirable. The resolution establishing the committee shall prescribe the name and functions of the committee, and shall name the Director or Directors who shall constitute it and the Chairperson thereof. A majority of the members of any such committee shall constitute a quorum. Vacancies on any such committee shall be filled by appointment by the Board. The committee shall keep a record of its proceedings and shall report to the Board as and when required by it.

Article V—Meetings of Board

Sec. 5.1 Regular Meetings. A regular meeting of the Board shall be held quarterly on ten (10) days notice at such times and places as designated by resolution of the Board. In an election year, one such meeting shall be held no more than 45 days after the date of the election of Directors.

Sec. 5.2 Special Meetings. (a) Special meetings of the Board may be called by the Chairperson or by any three Board members on ten (10) days notice given in accordance with the regulations and bylaws of the Bank. The person or persons calling the meeting shall fix the time and place for the holding of the meeting.

(b) Special meetings of the Board may be held on less than ten (10) days notice if a majority of the Directors determines by a recorded vote that Bank business requires that the special meeting be held on less than ten (10) days notice and that no earlier public announcement of the change is possible.

Sec. 5.3 Notice. Notice of any meeting shall be given in writing and delivered in person, by mail, by facsimile, or by telegram, to each Director and published in the **Federal Register**. If mailed, such notices shall be deemed to be delivered when deposited in the United States mail, addressed to the Director at his address as it appears on the records of the Bank, with postage thereon prepaid; and if notice is by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegram company prepaid.

Sec. 5.4 Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board; *Provided, however,* That if less than a majority of the Board members is present at said meetings, a majority of Board members present may adjourn the meeting from time to time; *And Provided, further,* That the Secretary shall notify any absent Board members of the time and place of such adjourned meeting and shall publish notice thereof in the **Federal Register**. The act of a majority of the Board members present at a meeting at which a quorum is present shall be the act of the Board except as otherwise provided in these bylaws.

Sec. 5.5 Sunshine Act. All meetings of the Board shall comply with the Government in the Sunshine Act (5 U.S.C. 552b) and the regulations of the Bank implementing such Act (7 CFR 1600.1 *et seq.*).

Article VI—Officers

Sec. 6.1 Number. The officers of the Board of Directors shall be the Chairperson, Vice Chairperson, Secretary, Treasury, and such other officers as may be determined by the Board from time to time. The offices of Secretary and Treasurer may be held by the same person.

Sec. 6.2. Election and Term of Office. The officers shall be elected by the Board at the meeting of the Board held pursuant to section 5.1 of these bylaws. If the election of officers shall not be held at such meeting, such election shall be held as conveniently thereafter as may be. Each officer shall hold office until the first meeting of the Board following the next succeeding election of Directors or until his successor shall have been elected and shall have qualified. A vacancy in any office shall be filled by the Board for the unexpired portion of the term.

Sec. 6.3 Removal of Officers and Agents. Any officer or agent elected or appointed by the Board may be removed by the Board whenever in its judgment the best interest of the Bank will be served thereby.

Sec. 6.4 Chairperson and Vice Chairperson. The Chairperson or, in the Chairperson's absence or inability to act, the Vice Chairperson shall:

(a) Preside at all meetings of the stockholders and of the Board; and

(b) Not vote on a matter before the Board whenever the Chairperson's vote will cause a tie vote on the matter.

Sec. 6.5 Secretary and Assistant Secretary. The Secretary or, in his absence or inability to act, the Assistant Secretary, shall be responsible for:

(a) Keeping the minutes of all meetings except as otherwise provided in these bylaws;

(b) Seeing that all notices are duly given in accordance with these bylaws or as required by law;

(c) Safekeeping of the corporate records and affixing the seal of the Bank to all documents, the execution of which on behalf of the Bank under its seal, is duly authorized in accordance with the provisions of these bylaws;

(d) Keeping stock records containing names and addresses of all stockholders of the Bank, showing, among other things, the number of shares held by each, and the dates when they became the owners thereof;

(e) Attesting share certificates, and telephone debentures, the issue of which shall have been authorized by the Board;

(f) Keeping on file at all times a complete copy of the bylaws of the Bank containing all amendments thereto and, at the expense of the Bank, furnishing a copy of the bylaws and of all amendments thereto every stockholder; and

(g) In general performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board.

Sec. 6.6 Treasurer and Assistant Treasurer. The Treasurer or, in his absence or inability to act, the Assistant Treasurer, shall be responsible for:

(a) Custody of all funds and securities of the Bank;

(b) The receipt of, and the issuance of receipts for, all moneys due and payable to the Bank and for the deposit of all such moneys in the name of the Bank in accordance with the provisions of these bylaws;

(c) Signing all checks, drafts, or other orders for the payment of money; and

(d) In general performing all the duties incident to the office of the Treasurer and such other duties as from time to time may be assigned to him by the Board.

Sec. 6.7 Governor. The Governor shall be the chief executive officer of the Bank, and, without limiting the generality of the authority vested in him by law, shall:

(a) Sign share certificates and telephone debentures, the issue of which shall have been authorized by the Board, and any other instrument or document of the Bank;

(b) Establish the positions of Deputy Governor, Assistant Governor, Deputy Assistant Governor, Assistant Secretary, and Assistant Treasurer and recommend to the Board for approval those persons to serve in such positions; and establish such other positions as the Governor shall deem necessary, and appoint persons to fill such positions; and

(c) Carry-out policy adopted by the Board of Directors and administer the telephone program in compliance with the laws enacted by Congress.

Sec. 6.8 Bonds. Officers, employees or agents of the Bank shall be bonded, at the expense of the Bank, if and to the extent the Governor and the Board shall determine.

Sec. 6.9 Reports. The officers of the Bank shall annually submit to the stockholders and to persons with a loan or loan commitment from REA reports covering the business of the Bank. The Board shall also make an annual report to the Secretary of Agriculture, for transmittal to the Congress, on the Administration of title IV of the Rural Electrification Act of 1936, as amended, and upon any other matters relating to the effectuation of the policies of said title IV, including recommendations for legislation.

Article VII—Financial Transactions

Sec. 7.1 Countersignature of Checks, Draft, Etc. Unless otherwise determined by the Governor, all checks, drafts or other orders for the payment of money shall be countersigned by such person or persons as shall be designated by him.

Sec. 7.2 Deposits. All funds except petty cash on the Bank shall be deposited from time to time to the credit of the Bank in accordance with the provisions of 31 United States Code 867. If, in accordance with the provisions of such law, the Bank is permitted to choose a depository other than the Treasurer of the United States, the Governor, with the approval of the Board, shall select such other depository or depositories.

Sec. 7.3 Fiscal Year. The fiscal year of the Bank shall, through June 30, 1976, commence on July 1 of each year and end on June 30 of the following year; and shall, beginning on October 1, 1986, commence on October 1 of each year and end on September 30 of the following year with the three months ending on September 30, 1986, being considered a transition quarter between two fiscal years.

Article VIII—Patronage Capital

Sec. 8.1 Patronage Capital Assignable. Patronage capital assignable shall consist of all revenues of the Bank for any fiscal year in excess of the amount thereof necessary to:

(a) Pay expenses of the Bank, including without limitation, payments in lieu of property taxes as provided in section 401(c) of the Act;

(b) Pay interest on telephone debentures accruing in such fiscal year;

(c) Provide reasonable allowances for depreciation, obsolescence and losses on loans and interest receivable;

(d) Pay to the holder or holders of Class A stock an amount equal to two per centum (2%) per annum of the capital furnished to the Bank for such stock; and

(e) Pay to the holders of Class C stock dividends at the rate determined by the Board; *Provided, however,* That no dividends shall be declared on Class C stock until arrearages, if any, or payments to holders of the cumulative Class A stock have been paid: *And Provided, further,* That until all Class A stock shall have been retired, the Board shall not declare any dividends on Class C stock at an annual rate in excess of the ten current average rate payable on the Bank's telephone debentures.

Sec. 8.2 Calculation of Patronage Refunds. (a) After the end of each fiscal year after fiscal year 1987, the patronage capital assignable will be transferred to the reserve for losses due to interest rate fluctuations. Any amounts in this reserve then in excess of $10,000,000 shall be transferred from the reserve, on the basis of amounts first transferred to the reserve being those first transferred therefrom and these amounts shall be allocated as Class B stock to those borrowers holding Class B stock during the fiscal year the amounts were earned. The amount allocated to each such holder of Class B stock for each fiscal year shall be calculated by applying to the amount for a particular year transferred from the reserve pursuant to the preceding sentence the ratio which the amount of interest revenue to the Bank from each such holder of Class B stock in that same fiscal year bears to the Bank's total interest revenue from all holders of Class B stock in that same fiscal year.

(b) If, at any time after all Class A stock has been retired, the Board should determine that the Bank's financial condition will not be impaired thereby, it may establish procedures for the retirement of Class B stock in full or in part or its conversion to Class C stock in addition to the conversion authorized in section 2.2(b) hereof.

Sec. 8.3 Calculation of Class C Stock Dividend. For any fiscal year after 1988, any dividends on Class C stock shall be paid to the holders hereof on the basis of one-twelfth of the dividend for each month, or portion of a month, the stock in held during such fiscal year.

Article IX—Miscellaneous

Sec. 9.1 Waiver of Notice. Any stockholder or member of the Board may waive in writing any notice of a meeting required to be given by these bylaws, either before or after the time of such meeting. The attendance of a stockholder or member of the Board at any meeting shall constitute a waiver of notice of such meeting by such stockholder or Board member, unless such attendance shall be for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

Sec. 9.2 Policies, Rules and Regulations. The Board shall have power to make and adopt such policies, rules and regulations, not inconsistent with law or these bylaws, as it may deem advisable for the management of the Bank.

Sec. 9.3 Accounting System and Audit Reports. The Board shall cause to be established and maintained a complete accounting system which, among other things, shall conform to accounting system principles, standards and procedures applicable to corporate business enterprises. A summary of the report of each audit of the Bank's financial transactions made by the General Accounting Office of the United States shall be mailed to each stockholder promptly after the report shall have been received.

Sec. 9.4 Seal. The Board shall adopt a suitable corporate seal, containing the name of the Bank.

Sec. 9.5 Conduct of Meetings. Meetings of stockholders and Directors

of the Bank shall be conducted in accordance with the current edition of Roberts' Rules of Order except as such rules may be inconsistent with the Act or these Bylaws.

Article X—Amendments

These bylaws may be altered or amended by a vote of two-thirds of the entire Board at any regular or special meeting of the Board provided the notice of such meeting shall contain a copy of the proposed amendment or alteration. All stockholders shall be notified immediately of any amendment of these bylaws.

Copies of the bylaws, as revised, are being mailed to all stockholders of the Bank and all recipients of telephone loans from the Rural Electrification Administration or the Rural Telephone Bank. Others may receive copies from the Governor, Rural Telephone Bank, room 4051, South Building, United States Department of Agriculture, Washington, DC 20250, telephone 202–382–9540.

Dated: October 25, 1991.

Gary C. Byrne,

Governor Rural Telephone Bank.

[FR Doc. 26285 Filed 10–30–91: 45 am]

BILLING CODE 3410–15–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Forum of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 5 p.m. on November 20, 1991, at the John Anson Park Community Center, 8000 Scout Avenue, Bell Gardens, California 90202. The Committee will meet to discuss civil rights issues in the City of Bell Gardens.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Michael C. Carney or Philip Montez, Director of the Western Regional Office at (213) 894–3437 (TDD 213/894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 28, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–26277 Filed 10–30–91; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will be held from 6:30 p.m. until 8:30 p.m. on Thursday, November 21, 1991, at the Holiday Inn Airport Hotel, 1659 West North Temple, Salt Lake City, Utah 84116. The purpose of this meeting is to conduct orientation for the newly appointed SAC members, discuss current Civil Rights issues and plan for future activities.

Persons desiring additional information should contact Committee Chairperson, Robert Riggs, or William F. Muldrow, Director of the Rocky Mountain Regional Division (303) 844–6716 (TDD 303–844–6720). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 25, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–26202 Filed 10–30–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Professional Skills Development Program Training Survey.

Form Number(s): PSDP.

Agency Approval Number: 0607–0504.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 436 hours.

Number of Respondents: 6,320.

Avg Hours Per Response: 4 minutes.

Needs and Uses: This training survey is part of the Professional Skills Development Program which is designed to train newly hired professional employees of the Census Bureau in census/survey methods. The course involves training in such areas as sampling, questionnaire design, field procedures, and data processing. The training survey, which is designed by participants in the program, is used to collect demographic information from households or farms. The program participants conduct the survey as the final phase of their training. Data gathered in the survey are used solely for evaluating the performance of the training participants and are not published or otherwise disclosed by the Census Bureau.

Affected Public: Individuals or households, farms.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 25, 1991

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–26313 Filed 10–30–91; 8:45 am]

BILLING CODE 3510–07–F

Bureau of the Census

[Docket No. 911062–1262]

Annual Wholesale Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with title 13, United States Code, sections 182, 224, and 225, I have determined the Census Bureau needs to collect data covering year-end inventories, annual sales, and purchases to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public

and business needs. This annual survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides on a comparable classification basis annual sales, purchases, and inventories for 1990 and 1991. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Dale W. Gordon or Edward Murphy on (301) 763–3916.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuing and timely national statistical data on wholesale trade for the period between Economic Censuses. The next Economic Census will be conducted for 1992. The data collected in this survey will be within the general scope and nature of those inquiries covered in the Economic Censuses.

The Census Bureau will require selected firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 1991 Annual Wholesale Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submission within 30 days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

This survey has been submitted to the Office of Management and Budget, in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and was cleared under OMB Control No. 0607–0195. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Conclusion:

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: October 5, 1991.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 91–26270 Filed 10–30–91; 8:45 am]

BILLING CODE 3510–07–M

Bureau of Export Administration

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held November 25 & 26, 1991, in the Herbert C. Hoover Building, room 1617F, 14th & Pennsylvania Avenue NW., Washington, DC. On November 25, the Executive Session will convene at 9 a.m. and adjourn at 10 a.m. The General Session will convene at 10 a.m. and adjourn at 3 p.m. The Executive Session will then convene at 3 p.m. and adjourn at 5 p.m. On November 26, the Executive Session will convene at 9:30 a.m. and adjourn at 3 p.m. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems/peripherals or technology.

Agenda

Executive Session November 25, 1991, 9 a.m.–10 a.m.

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

General Session November 25, 1991, 10 a.m.–3 p.m.

2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Presentation of the Export Management System by the Office of Export Licensing, Bureau of Export Administration.
5. Presentation by MIPS Computer Systems, Inc. and Silicon Graphics Computer Systems on advances in Reduced Instruction Set Computing (RISC) Technology and Workstations.
6. Presentation by Digital Equipment Corporation on advances in disk drive technologies.

Executive Session November 25, 1991, 3 p.m.–5 p.m.; November 26, 1991, 9:30 a.m.–3 p.m.

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 1621, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377–2583.

Dated: October 28, 1991.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 91–26301 Filed 10–30–91; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 62–91]

Foreign-Trade Zone 22—Chicago, IL; Application for Subzone, Abbott Pharmaceutical Plant, North Chicago, IL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Illinois International Port District, grantee of Foreign-Trade Zone 22, requesting special-purpose subzone status for the pharmaceutical and medical products manufacturing plant of Abbott Laboratories, Inc., located in the North Chicago, Illinois, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 22, 1991.

Abbott is a worldwide producer of health care products with annual sales of over $5 billion. Some 35 percent of its sales are in international markets.

The Abbott manufacturing and research complex covers 6 sites (1,250 acres) in North Chicago and adjacent Lake County, Illinois, 40 miles north of

Chicago. The facilities (10,000 employees) are used to produce a range of pharmaceuticals, medicaments, and laboratory and medical products. Primary product lines include antibiotics and vasodilators. Some of the materials used at the plant are purchased from abroad, including beta keto ester, cyclohexalketal and hexalketal reagents, tribromoanaline, 2, 4 difluoroanaline, lincomycin, methylprednisolone, succinic anhydride, and flexible pipetting stations.

Zone procedures would exempt Abbott from Customs duty payments on foreign materials used in its exports. On its domestic sales, the company would be able to choose the lower finished product duty rates (3.7–13.5%). The duty rates on the foreign materials range from 5.3 to 18.6 percent. The application indicates that zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones staff, U.S. Department of Commerce, Washington, DC 20230; Richard Roster, District Director, U.S. Customs Service, North Central Region, 610 South Canal Street, Chicago, IL 60607; and, Lt. Colonel Randall R. Inouye, District Engineer, U.S. Army Engineer District Chicago, 111 North Canal Street, Chicago, IL 60606.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 12, 1991.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Mid-Continental Plaza, room 1406, 55 East Monroe Street, Chicago, Illinois 60603

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: October 24, 1991.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 91–26307 Filed 10–30–91; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 60–91]

Foreign-Trade Zone 72—Indianapolis, IN; Application for Subzone Endress + Hauser Industrial Instruments Plant, Greenwood, IN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indianapolis Airport Authority, grantee of FTZ 72, requesting special-purpose subzone status for the industrial control instrumentation manufacturing facility of Endress + Hauser, Inc. (E+H) (subsidiary of E+H AG, Switzerland), located in Greenwood, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 15, 1991.

The E+H manufacturing plant (83,000 sq. ft on 7.3 acres) is located at 2350 Endress Place, adjacent to U.S. Route 31 in northern Johnson County, some 25 miles southeast of Indianapolis. The facility employs 190 persons and is used for the manufacturing, warehousing, research/development, and testing of industrial process control instruments and sensors for measuring pressure rates, liquid levels, material flow rates and moisture levels. The finished instruments include hygrometers, pyrometers, calibrating meters, hydraulic and pneumatic regulators, and automatic regulating instruments for heating/cooling systems (HTS Headings 9025–28, 9030, 9032). Components and materials sourced abroad include: Epoxides, plastics, stainless steel wire, steel springs, copper springs and screws, aluminum fasteners, ADP equipment, electronic components, and various instrument parts and accessories (duty rate range: Free–10%).

Zone procedures would exempt E+H from Customs duty payments on the foreign materials used in its export production. On its domestic sales, the company would be able to choose duty rates that apply to finished instrumentation and sensors (duty rates: 3.9%–10%). The applicant indicates that subzone status would help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 55 Erieview Plaza, Cleveland, OH 44114; and, Colonel David E. Peixotto, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201–0059.

Comments concerning the proposed foreign-trade subzone are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 12, 1991.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, One North Capital, suite 520, Indianapolis, Indiana 46204

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: October 24, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–26308 Filed 10–30–91; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 61–91]

Foreign-Trade Zone 72—Indianapolis, IN; Application for Subzone Onkyo Electronic Audio Products Plant, Columbus, IN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indianapolis Airport Authority, grantee of FTZ 72, requesting special-purpose subzone status for the electronic audio and acoustical products manufacturing facility of Onkyo America, Inc. (OAI) (subsidiary of Onkyo Corporation, Japan), located in Bartholomew County, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 17, 1991.

The OAI manufacturing plant (129,000 sq. ft. on 25 acres) is located at 3030 Barker Drive adjacent to Interstate 65, five miles southwest of Columbus, Indiana. The facility (262 employees) is used to produce electronic hi-fidelity audio and acoustical products, including microphones, loudspeakers, headphones, amplifiers, cassette and compact disk players, tape recorders, and radiotelegraphy devices (HTS Headings 8518, 8519, 8520, 8527). Components and materials purchased from abroad include air/vacuum pumps, electric motors and generators, magnets,

capacitors, resistors, printed circuit boards, diodes, transistors, integrated circuits, semiconductors, electrical filament or discharge lamps (duty rate range: free—12.5%).

Zone procedures would exempt OAI from Customs duty payments on the foreign components used in its export production. On its domestic sales, the company would be able to choose duty rates that apply to finished electronic audio and acoustical products (duty rates: 3.7%—8.5%). The applicant indicates that subzone status would help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 55 Erieview Plaza, Cleveland, OH 44114; and, Colonel David E. Peixotto, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201–0059.

Comments concerning the proposed foreign-trade subzone are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 12, 1991.

A copy of an application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, One North Capital, suite 520, Indianapolis, Indiana 46204

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: October 24, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–26309 Filed 10–30–91; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 59–91]

Foreign-Trade Zone 110—Albuquerque, NM; Application for Expansion of Subzone 110A Adria-SP Pharmaceutical Products Plant Albuquerque, NM

An application has been submitted to the Foreign-Trade Zones (the Board) by the City of Albuquerque, New Mexico, grantee of FTZ 110 and FTZ Subzone 110A at the pharmaceutical manufacturing plant of Adria-SP, Inc. (formerly Summa Medical Corporation) located in Albuquerque, New Mexico, requesting authority to expand the subzone and the scope of manufacturing authority. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulation of the Board (15 CFR part 400). It was formerly filed on October 11, 1991.

Subzone 110A was approved in 1984 for the manufacture of certain pharmaceutical products, primarily for export (Board Order 279, 49 FR 44516, 11/7/84). In 1988, Summa was purchased by Erbamont, Inc., and its name was changed to Adria-SP, Inc.

Adria is expanding operations at its Albuquerque facility and requests an expansion of its subzone authority. The application requests that subzone status be expanded to encompass the entire Adria manufacturing facility (55,000 sq. ft.) at 4272 Balloon Park Road, Albuquerque, and to include the company's warehouse (38,000 sq. ft.) at 3700 Osuna Road. Adria is also expanding its products lines to a wider range of pharmaceutical products, including sterile injectable drugs and anti-cancer drugs.

The new operations will use foreign-sourced materials similar to those used in existing production, primarily bulk active ingredients (e.g., bulk doxorubicin hydrochloride). The value of foreign materials is currently over 75 percent. The finished products are manufactured for both the foreign and domestic markets. Products not approved by the FDA (Food and Drug Administration) for sale in the United States will be produced only for export under FDA regulations.

Zone procedures exempt Adria from Customs duty payments on foreign materials used in production for export. On domestic sales, the company is able to defer Customs duty payments. Duty rates for foreign materials as well as finished products range from 3.4 to 6.3 percent, and the company indicates that there are no inverted tariff rates involved. The application indicates that expanded subzone authority will help improve its international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Office of Inspection and Control, U.S. Customs Service, Southwest Region, 5850 San Felipe, Houston, TX 77057; and Lt. Colonel Michael J. Debow, District Engineer, U.S. Army Engineer District Albuquerque, P.O. Box 1580, Albuquerque, NM 87103.

Comments concerning the proposed expansion are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 12, 1991.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Suite 1015, 505 Marquette Avenue NW., Albuquerque, NM 87102

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: October 24, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–26306 Filed 10–30–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–357–405]

Barbed Wire and Barbless Fencing Wire From Argentina; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of Intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on barbed wire and barbless fencing wire from Argentina. Interested parties who object to this revocation must submit their comments in writing no later than November 30, 1991.

EFFECTIVE DATE: October 31, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1981, the Department of Commerce ("the Department") published an antidumping duty order on barbed wire and barbless fencing wire from Argentina (48 FR 49126). The Department has not received

a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, were are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than November 30, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by November 30, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by November 30, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: October 25, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-26303 Filed 10-30-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-017]

Pads for Woodwind Instrument Keys From Italy Determination Not; Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on pads for woodwind instrument keys from Italy.

EFFECTIVE DATE: October 31, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION: On September 5, 1991 the Department of Commerce (the Department) published in the **Federal Register** (56 FR 43906) its intent to revoke the antidumping duty order on pads for woodwind instrument keys from Italy (49 FR 37137), September 21, 1984. The Department may revoke an antidumping duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. We had not received a request to conduct an administrative review of this order for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke pursuant to § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)).

On September 18, 1991, Prestini Musical Instruments, the petitioner, objected to our intent to revoke this order. Therefore, we no longer intend to revoke the order.

Dated: October 23, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-26304 Filed 10-30-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-502]

Small Diameter Standard and Rectangular Pipe and Tube From Singapore; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on small diameter standard and rectangular pipe and tube from Singapore. Interested parties who object to this revocation must submit their comments in writing no later than November 30, 1991.

EFFECTIVE DATE: October 31, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1986, the Department of Commerce ("the Department") published an antidumping duty order on small diameter standard and rectangular pipe and tube from Singapore (51 FR 41142). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than November 30, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by November 30, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by November 30, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: October 25, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-26305 Filed 10-30-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-816]

Self-Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On the basis of information gathered by the U.S. Department of Commerce, the Department is self-initiating a countervailing duty (CVD) investigation to determine whether subsidies are being provided, or are likely to be provided, to manufacturers producers, or exporters of certain softwood lumber products from Canada We are notifying the U.S. International

Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry, or are materially retarding the establishment of a U.S. industry. The ITC will make its preliminary determination on or before 45 days after publication of this notice. If this investigation proceeds normally, we will make our determination on or before 85 days after publication of this notice.

EFFECTIVE DATE: October 31, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Rollin or Barbara Tillman, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, room B–099, Washington, DC 20230; telephone (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Initiation

On September 3, 1991, the Government of Canada announced its intention to terminate the U.S.-Canada Memorandum of Understanding on Softwood Lumber (MOU) effective October 4, 1991. The MOU was negotiated to resolve a long-standing trade dispute over the issue of subsidized Canadian lumber exports to the United States.

On October 4, 1991, the U.S. Government announced that the Department of Commerce would self-initiate a CVD investigation. This notice implements the self-initiation pursuant to section 702(a) of the Tariff Act of 1930, as amended (the Act). Based on information gathered by the Department, there is sufficient evidence to warrant the initiation of a CVD investigation to determine whether Canadian softwood lumber is subsidized and whether subsidized lumber imports are causing, or threatening, material injury to a U.S. industry. We also determine that Canada's unilateral termination of the MOU, which was the basis for the withdrawal of the CVD petition and the termination of the CVD investigation in 1986, constitutes special circumstances within the meaning of article 2.1 of the Agreement on Interpretation and Application of articles VI, XVI, and XXIII on the General Agreement on Tariffs and Trade (Subsidies Code).

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, title VII of the Act applies to this investigation, and the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, the U.S. industry.

If any interested party, as described in 19 CFR 355.2(i), wishes to register support for, or opposition to, this proceeding, please file written notification with the Assistant Secretary for Import Administration.

Background

On June 5, 1986, the Department initiated a CVD investigation as a result of an industry petition regarding certain softwood lumber products from Canada. On October 22, 1986, following a preliminary determination of material injury by the U.S. International Trade Commission (ITC), the Department published preliminary determination that subsidies of 15 percent *ad valorem* were being provided to Canadian producers of certain softwood lumber products. The primary subsidy was the selective provision of a government resource, provincially-owned timber, at administratively-set prices which were determined to be at preferential rates within the meaning of subsection 771(5)(A)(ii) of the Tariff Act of 1930, as amended (the Act).

On December 30, 1986, before the final determination in the CVD investigation, the United States and Canada arrived at a settlement of the dispute regarding the existence and level of subsidies, and entered into the MOU. Under the MOU, the Government of Canada agreed to impose a 15 percent export charge on certain softwood lumber products; such charge could be reduced or eliminated for lumber from provinces that instituted replacement measures increasing the fee charged on the harvest of timber. In exchange for Canada's agreement to collect an export charge under the MOU, the U.S. lumber industry withdrew its petition and the Department terminated its investigation. As a result, the Department never made a final CVD determination which, if affirmative, would have offset unfairly subsidized imports through the imposition of countervailing duties.

Since October 4, 1991, Canada has not been collecting the export charges agreed to under the MOU. While some of the provinces had replaced the export charge with higher timber fees, lumber produced in four Canadian provinces and the two Canadian territories, amounting to over one-third of Canadian lumber production and about one-fifth of Canadian lumber being exported to the United States, were never relieved of the full Canadian export charge.

As a consequence of Canada's termination of the MOU, the U.S. lumber industry will be denied the offset that had been provided by Canadian export charges against what in 1986 preliminarily had been found to be injurious Canadian subsidies. Furthermore, the U.S. Government and the U.S. industry will no longer have the ability to determine whether the timber fee increases instituted in some provinces to replace or reduce the export charge will remain in place because there will no longer be the exchange of information that occurred under the MOU.

Following consultations with Canada, the U.S. Government announced that it was taking the following actions in response to Canada's unilateral termination of the MOU. First, the U.S. Government instituted interim measures as specified in Initiation of Section 302 Investigation and Request for Public Comment on Determinations Involving Expeditious Actions: Canadian Exports of Softwood Lumber (56 FR 50738, October 8, 1991). Second, the U.S. Government announced that, as part of its enforcement measures arising out of the MOU, it would self-initiate a CVD investigation based on: (1) The special circumstances resulting from Canada's breach of the agreement between the two governments which had resulted in execution of the MOU and termination of the CVD investigation; and (2) information that the Department gathered regarding the extent of Canadian lumber subsidies and the likelihood that imports of these products result in material injury, or the threat of material injury, to the U.S. industry.

Since the October 4 announcement that the Department would self-initiate a CVD investigation, the U.S. Government has held consultations with the Government of Canada. During these consultations, we discussed with the Government of Canada the evidence that the Department had gathered supporting the initiation of the investigation, and we subsequently provided the Government of Canada with a summary of such evidence. During the consultations, the Government of Canada raised several concerns that we have taken into consideration for purposes of this initiation.

Allegations of Subsidies

Stumpage Programs

We are initiating the investigation on stumpage programs, which are government programs through which individuals and companies acquire the rights to cut and remove standing timber from provincial forest lands.

In its 1986 Preliminary determination (See, Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from

Canada, 51 FR 37453, October 22, 1986), the Department found that stumpage programs were limited to a specific enterprise or industry, or group of enterprises or industries, as well as provided at preferential rates. The Department has current information indicating that discretion is exercised in the awarding of stumpage rights and the setting of stumpage prices. The exercise of discretion in the awarding of stumpage rights is an indication of specificity, and as such, is sufficient to meet the threshold for initiation.

We also have evidence that stumpage is preferentially priced. Relying on information from a variety of public sources, we estimate that subsidies exist, based on comparisons of administratively set stumpage prices to either competitive or private stumpage prices within Canada. These comparisons are in accordance with the Department's proposed regulations. See Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366, May 31, 1989.

Log Export Restrictions

The Department has gathered information indicating that the Government of Canada places restrictions on the export of logs from Canada and that the provincial governments of British Columbia, Quebec, Ontario, and Alberta place restrictions on exports of logs from the individual provinces. These export restrictions, which range from substantial export tax requirements to requirements that timber harvested in a province must be processed in the province, have the effect of a ban on log exports. In British Columbia, the primary means of restricting log exports used by the provincial government is an imposition of a 100 percent tax on the differential between the average domestic log price and the export price of logs. BC also imposes other restrictions, such as a requirement that companies seeking to export logs demonstrate that those logs are surplus to the needs of mills within the province. Alberta, Ontario, and Quebec restrict log exports by requiring that logs harvested in each province also be processed domestically.

In the Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Leather from Argentina (55 FR 40212 (1990)), the Department determined that programs that restrict exports are countervailable. In Leather from Argentina, the Department determined that export restrictions prohibiting the export of cattle hides caused hide prices to be lower than they would have been absent the restrictions, and provided a countervailable benefit to leather tanners as the specific users of cattle hides. Although economic theory would indicate that log export restrictions in Canada artificially lower domestic log prices, the Department requires evidence demonstrating that the restrictions had measurable downward effect on log prices in order to meet the threshold for initiation. See, Notice of Initiation of Countervailing Duty Investigation: Extruded Rubber Thread from Malaysia, 56 FR 48162 (1991). Presently, the Department does not have sufficient evidence to ascertain the extent to which the log export restrictions artificially lower domestic prices for logs, the major input into the product under investigation. However, if an interested party submits such evidence during the course of the proceeding, the Department remains willing to investigate these programs.

Injury and Causation Analysis

Evidence available to the Department demonstrates that the U.S. softwood lumber industry is currently suffering material injury as a result of subsidized softwood lumber imports from Canada, and faces the threat of further, more extensive, material injury. The indicators that the International Trade Commission (ITC) considers when assessing material injury point to weaknesses in the domestic industry. In particular, the data show a downward trend in domestic production, shipments, capacity utilization, employment, and prices. As a result, the industry is experiencing a considerable decline in profitability.

Canada has consistently captured a significant and substantial share of the U.S. market, even during the MOU. Furthermore, U.S. lumber prices have been depressed. Given that lumber is an extremely fungible commodity and U.S. prices are depressed, and given that Canada's already significant share of the U.S. market appears to be rising, there is a clear indication that subsidized Canadian lumber imports are a cause of injury to the U.S. industry.

Scope of Investigation

For purposes of this investigation, certain softwood lumber products are defined as:

Coniferous wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 millimeters (mm); such products are imported under the subheading 4407.1000 of the Harmonized Tariff Schedule (HTS) of the United States; and

Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbitted, chamfered, V—jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed; and other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbitted, chamfered, V—jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed; such products are imported under subheadings 4409.1010 and 4409.1090 of the HTS; and

Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbitted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed; such products are imported under subheading 4409.1020 of the HTS.

Exemption of Maritime Provinces

Article 2.1 of the Subsidies Code requires special circumstances for a signatory to self-initiate an investigation. As discussed above, the Department has determined that special circumstances exist which warrant the self-initiation of a CVD investigation. Because softwood lumber products produced in the Maritime provinces (New Brunswick, Newfoundland, Nova Scotia, and Prince Edward Island) from timber harvested in the Maritime Provinces. Therefore, the Department determines that softwood lumber products produced in the Maritime provinces from timber harvested in the Maritime provinces are exempt from the investigation.

Other Issues

Softwood lumber products made from U.S.-origin logs, and remanufactured products were granted special treatment under the MOU, but were not granted total exemptions from the MOU.

In the case of lumber made from U.S.-origin logs, the exemption from the export charge was capped at a specified level, beyond which the export charge was applied. Furthermore, the exemption allocation granted to companies varied from year to year. Because we are unable to establish with certainty at this time which companies produce lumber from U.S.-origin logs,

such lumber cannot be exempted from the initiation of this investigation. However, pursuant to 19 CFR 355.14, companies producing lumber from U.S.-origin logs will be entitled to request company-specific exclusions during the CVD investigation.

The export charge was assessed on all remanufactured products, but only on the value of the softwood lumber in the remanufactured product, not on the total value of the final product. The issue of remanufactured products pertains to the valuation of the subsidy and the assessment of any potential countervailing duties, not to product exemptions. As such, this issue can only be examined during the course of the investigation.

ITC Notification

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at our decision to self-initiate this investigation. Also, we will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Compliance, Import Administration.

Preliminary Determination by the ITC

The ITC will determine no later than 45 days after publication of this notice, whether there is a reasonable indication that imports of certain softwood lumber products from Canada materially injure, threaten material injury to, or materially retard establishment of, a U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before 85 days after publication of this notice, unless the investigation is terminated pursuant to 19 CFR 355.17 or the preliminary determination is extended pursuant to 19 CFR 355.15.

This notice is published pursuant to section 702(a) of the Act and 19 CFR 355.11.

Dated: October 23, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91- 26047 Filed 10-30-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-816]

Amendment to the Notice of Self-Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products From Canada

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of amendment to self-initiation of countervailing duty investigation.

EFFECTIVE DATE: October 31, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Rollin or Barbara Tillman, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone: (202) 377-2786.

Amendment

The paragraph entitled "Exemption of Maritime Provinces" in the Notice of Self-Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada published elsewhere in this issue of the **Federal Register** is to be deleted and replaced with the following:

Exemption of the Maritime Provinces

Article 2.1 of the Subsidies Code requires special circumstances for a signatory to self-initiate an investigation. As discussed above, the Department has determined that special circumstances exist which warrant the self-initiation of a CVD investigation. Because exports to the United States of America of certain softwood lumber products produced in the provinces of Prince Edward Island, Nova Scotia, New Brunswick and Newfoundland (the Maritime Provinces) were exempt from payment of the export charge under the MOU, these same special circumstances do not exist for the Maritime Provinces. Therefore, the Department determines that exports to the United States of America of certain softwood lumber products produced in the Maritime Provinces are exempt from the investigation. This exemption shall not apply to certain softwood lumber products produced from Crown timber harvested in any other Province.

This amendment clarifies the intent of the Department regarding the exemption of the Maritime Provinces from the investigation.

Dated: October 28, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-26315 Filed 10-30-91; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of Initiation of Process to Revoke Export Trade Certificates of Review No. 84-00035, No. 89-00003 and No. 89-00013.

SUMMARY: The Department of Commerce had issued an export trade certificate of review to Global Operations Company, Passport International, and International Lumber Company, Inc, respectively. Because these certificate holders have failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificates. This notice summarizes the notification letters sent to Global Operations Company, Passport International, and International Lumber Company, Inc., respectively.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on February 19, 1985 to Global Operations Company (application no. 84-00035), on May 16, 1989 to Passport International (application no. 89-00003), on October 18, 1989 to International Lumber Company, Inc. (application no. 89-00013).

A certificate holder is required by law (section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14 (a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation (§§ 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to Global Operations Company on February 12, 1991, a letter containing annual report questions with a reminder that its annual report was due on April 5, 1991. Additional reminders were sent on April 9, 1991 and on April 23, 1991. The Department has received no written response to any of these letters.

On May 3, 1991, the Department of Commerce sent to Passport International a letter containing annual report questions with a reminder that its

annual report was due on June 30, 1991. Additional reminders were sent on July 22, 1991 and August 22, 1991. The Department has received no written response to any of these letters.

On October 3, 1990, the Department of Commerce sent to International Lumber Company, Inc. a letter containing annual report questions with a reminder that its annual report was due on December 2, 1990. Additional letters were sent on December 7, 1990 and December 27, 1991. The Department has received no written response to any of these letters.

On October 25, 1991, and in accordance with § 325.10(c)(2) of the Regulations, a letter was sent by certified mail to notify the Global Operations Company, Passport International and International Lumber Company, Inc., respectively, that the Department was formally initiating the process to revoke their respective certificates. The letter stated that this action is being taken for the certificate holder's failure to file an annual report.

In accordance with § 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holders decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (§ 325.10(c)(2) of the Regulations).

If the answer demonstrates that material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (§ 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of a revocation or modification or a decision not to revoke or modify (§ 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register**.

Authority: §§ 325.10(c)(4) and 325.11 of the Regulations.

Dated: October 25, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-26232 Filed 10-30-91; 8:45 am]

BILLING CODE 3510-DR-M

Short-Supply Determination: Certain Steel Plate

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain steel plate.

SHORT-SUPPLY REVIEW NUMBER: 58.

SUMMARY: The Secretary of Commerce hereby grants a short-supply request for 28,328.4 net tons of certain steel plate to be delivered from January 20 through February 29, 1992 under Article 8 of the U.S.-E.C. steel arrangement.

EFFECTIVE DATE: October 24, 1991.

FOR FURTHER INFORMATION CONTACT: Mark B. Brechtl or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377-1386 or 377-0159.

SUPPLEMENTARY INFORMATION: On September 27, 1991, the Secretary of Commerce ("Secretary") received an adequate petition from Berg Steel Pipe Corporation ("Berg") requesting a short-supply allowance for 28,328.4 net tons of American Petroleum Institute modified X-70 grade steel plate to be delivered to Berg between January 20 and February 29, 1992, under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products. Berg requests the following quantities of two different sizes of this steel plate: 18,851.1 net tons of this plate that is 130.297 inches in width and 0.630 inch in thickness, and 9,477.3 net tons of this plate 148.923 inches in width and 0.701 inch in thickness. Berg will use the X-70 grade material to manufacture large diameter pipe ("LDP") for TransCanada Pipelines ("TransCanada"), a Canadian company which will use the LDP to construct a natural gas pipeline in Canada. Berg is requesting short supply for 28,328.4 net tons of steel plate because it believes that this product is not available in the United States, and its potential foreign suppliers have insufficient regular export licenses available during this period. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Pub. L. No. 101-221, 103 Stat. 1886 (1989) (the "Act"), and Section 357.102 of the Department of Commerce's Short-Supply Procedures. (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

On September 27, 1991, the Secretary established an official record for this short-supply request (Case Number 58) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. On October 8, 1991, the Secretary published a notice in the **Federal Register** (56 FR 50707) announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than October 15, 1991, and interested parties were invited to file replies to any comments no later than five days after that date. In order to determine whether this product could be supplied by U.S. producers for delivery from January 20 through February 29, 1992, the Secretary sent questionnaires to the three domestic steel plate producers, Bethlehem Steel Corporation ("Bethlehem"), Oregon Steel Mills ("OSM"), and USX Corporation ("USX"), that have the capability to produce the noted sizes of X-grade plate. TransCanada was also sent a separate questionnaire regarding its qualification procedure. The Secretary received timely questionnaire responses from Bethlehem, OSM, and USX, and rebuttal comments from Berg regarding USX's response. USX also submitted two responses to Berg's rebuttal comments. TransCanada did not respond to its questionnaire.

Questionnaire Responses

Bethlehem stated that it is not able to supply Berg with the subject steel plate during the requested time period because it cannot meet the noted specifications. OSM also did not offer to supply the requested product. USX stated in its questionnaire response that it can meet the required specifications, with the exception of the size of fusion bond epoxy ("FBE") test sample. USX offered to supply 4,200 net tons of any combination of the two sizes requested by Berg for delivery between January 20 and February 29, 1992.

Berg's rebuttal comments took issue with USX's ability to meet the required specifications for yield strength and FBE sample size, as well as USX's lack of qualification to TransCanada for this material.

USX responded to Berg's comments by noting that it was unable to guarantee that it could meet consistently the yield strength specification throughout the entire plate. On October 24, 1991, USX submitted additional comments and stated that it would not supply Berg with the 4,200 net tons of the requested product.

Conclusion

Because no U.S. producer has offered to supply Berg with the requested X–70 grade steel plate, the Secretary can only conclude that a condition of short supply exists for the requested product. Pursuant to section 4(b)(4)(A) of the Act, and § 357.102 of Commerce's Short-Supply Procedures, the Secretary grants Berg a short-supply allowance for 28,328.4 net tons of the X–70 grade steel plate included in this request to be delivered from January 20 through February 29, 1992, under the U.S-E.C. steel arrangement.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration

[FR Doc. 91–26302 Filed 10–30–91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Queens, New York

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $165,000 in Federal funds, and a minimum of $29,118 in non-Federal (cost sharing) contribution, from April 1, 1992 to March 31, 1993. Cost-sharing contributions, may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Queens, N.Y. SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&%TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A–129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free-workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative

Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is December 6, 1991. Applications must be postmarked on or before December 6, 1991.

Proposals will be reviewed by the Washington Regional Office, mailing address for submission is:

ADDRESSES: Gina A. Sanchez, Regional Director, Washington Regional Office, Minority Business Development Agency, 14th & Constitution Ave. NW., room 6711, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John F. Iglehart, Regional Director, New York Regional Office at (212) 264–3263.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above New York address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: October 24, 1991.

John F. Iglehart,

Regional Director, New York Regional Office.

[FR Doc. 91–26229 Filed 10–30–91; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Atlantic Striped Bass Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reauthorization of Atlantic Striped-Bass Conservation Act.

SUMMARY: NMFS announces the reauthorization of the Atlantic Striped Bass Conservation Act. The Atlantic Striped Bass Conservation Act Appropriations Authorization (Act), Public Law 100–589, reproduced at 16 U.S.C. 1851 note, expired on September 30, 1991. The Act was reauthorized on October 17, 1991, as Public Law 102–130. The regulations governing fishing for Atlantic striped bass in the Atlantic exclusive economic zone, which appear at 50 CFR part 656, remain in effect as provided for in section 4 of the reauthorized Act.

FOR FURTHER INFORMATION CONTACT: David G. Deuel or Austin R. Magill, NMFS, Recreational and Interjurisdictional Fisheries Division, 1335 East-West Highway, Silver Spring, MD 20910, telephone 301–427–2347.

Dated: October 25, 1991.

David S. Crestin,

Acting Director of Office Fisheries, Conservation and Management National Marine Fisheries Service.

[FR Doc. 91–26317 Filed 10–30–91; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will meet on November 11–15, 1991, at The Crown Sterling Suites Hotel, 4400 West Cypress Street, Tampa, Florida.

Council

The Council will initially convene at 9:45 a.m. November 13, 1991, and recess at 5:30 p.m. It will at that time consider the appointment of committee members (from 10 a.m. to 10:30 a.m.) and discuss limited access (from 10:30 a.m. to 5:30 p.m.). The Council will reconvene at 8:30 a.m. on November 14 to receive public testimony on Reef Fish Total Allowable Catches (TACs) (until 11 a.m.) and on Red Drum TAC (from 11 a.m. to 11:30 a.m.). The Council will also discuss recommendations for 1992 Reef Fish TACs (1 p.m. to 4 p.m.), and for Red Drum TAC (4 p.m. to 5 p.m.).

On November 15, at 8 a.m., the Council will begin its meeting with a report from the Personnel Committee (in closed session—not open to the public—until 8:45 a.m.). After the closed session, the Council will review the Data Collection Amendment Options Paper (from 8:45 a.m. to 10:30 a.m.). It will then receive reports from the Habitat Protection Committee (from 10:30 a.m. to 10:45 a.m.), the Butterfish Management Committee (from 10:45 a.m. to 11 a.m.), and the Shrimp Management Committee (from 11 a.m. to 11:15 a.m.). Enforcement and Director's reports will follow. The meeting will adjourn at 12 p.m.

Committees

On November 11 the Butterfish Management Committee, the Habitat Protection Committee, the Personnel Committee and the Data Collection Committee will each convene at 10 a.m. and adjourn at 5:30 p.m. (The Personnel Committee will hold a closed session—not open to the public.) On November 12 the Red Drum Management Committee and the Reef Fish Management Committee will each convene at 8 a.m. and adjourn at 5:30 p.m. The Shrimp Management Committee will convene on November 13 at 8 a.m. and adjourn at 9:30 a.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: October 28, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–26316 Filed 10–30–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Korea

October 25, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 28, 1991.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 51754, published on December 17, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant

to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 25, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on October 28, 1991, you are directed to amend further the directive dated December 4, 1990 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
200	402,782 kilograms.
201	1,460,680 kilograms.
317/326	16,710,813 square meters.
410	3,774,875 square meters.
611	3,382,500 square meters.
613/614	5,483,750 square meters.
619/620	93,480,550 square meters.
624	7,267,000 square meters.
625/626/627/268/629.	13,999,176 square meters.
669-P [2]	2,069,705 kilograms.
Sublevels in Group II	
333/334/335	246,769 dozen of which not more than 126,127 dozen shall be in Category 335.
336	52,637 dozen.
338/339	1,086,500 dozen.
340	623,610 dozen of which not more than 323,798 dozen shall be in Category 340-D [3].
341	145,430 dozen.
342/642	182,918 dozen.
345	103,714 dozen.
347/348	476,155 dozen.
350	15,167 dozen.
351/651	208,363 dozen.
352	162,144 dozen.
359-H [4]	2,335,828 kilograms.
433	14,065 dozen.
434	7,214 dozen.
435	34,514 dozen.
436	14,747 dozen.
442	50,304 dozen.
443	341,380 numbers.
444	52,785 numbers.
445/446	52,763 dozen.
448	35,389 dozen.
459-W [5]	94,844 kilograms.
632	1,423,856 dozen pairs.
633/634/635	1,360,334 dozen of which not more than 153,459 dozen shall be in Category 633 and not more than 569,655 dozen shall be in Category 635.
636	258,193 dozen.
638/639	5,268,759 dozen.
640-D [6]	2,961,700 dozen.
641	1,072,060 dozen of which not more than 39,854 dozen shall be in Category 641-Y [7].
647/648	1,222,690 dozen.
650	22,194 dozen.
659-H [8]	1,250,868 kilograms.
Sublevel in Group III	
835	29,620 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[3] Category 340-D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[4] Category 359-H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[5] Category 459-W: only HTS number 6505.90.4090.

[6] Category 640-D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030.

[7] Category 641-Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[8] Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-26312 Filed 10-30-91; 8:45 am]

BILLING CODE 3510-DR-F

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for Thursday, 21 November 1991 at 10 a.m. in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 441 F Street NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202-504-2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 24 October 1991.

Charles H. Atherton,

Secretary.

[FR Doc. 91-26185 Filed 10-30-91; 8:45 am]

BILLING CODE 6330-01-M

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, 10(a) and 41 CFR 101-6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting on Wednesday, November 20, 1991 in the Hearing Room on the basement level of the Commission's Washington, DC headquarters, 2033 K Street, NW., Washington, DC. This meeting will be held between 1:30 p.m. and 5 p.m. The agenda consists of the following:

1. Welcoming remarks.

2. Reports—a. Activities of the CFTC's Regulatory Coordination Advisory Committee, presented by Chairman Wendy L. Gramm.

b. Recent international developments, including a report on the annual meeting of the International Organization of Securities Commissions.

c. Update on large order execution procedures.

d. Current Commission activities.

3. Discussion of regulatory issues concerning screen-based trading.

4. Discussion of sections 302 and 303 of S. 207 concerning exemptive authority, swaps and hybrid commodity instruments.

5. Discussion of possible areas for future Committee consideration and any other business that may properly come before the Committee, including the timing of the next meeting.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on financial products issues. The purposes and objectives of the Advisory Committee are more fully set forth in the April 25, 1991 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Chairman William P. Albrecht, is empowered to conduct the meeting in a fashion that will, in his judgment,

facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Nancy E. Yanofsky, Esq., Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, to be received prior to the date of the meeting. Members of the public who wish to make oral statements should also inform Ms. Yanofsky in writing at the above address at least three days prior to the meeting. Provision will be made, if time permits, for an oral presentation of reasonable duration.

Issued by the Commission in Washington, DC, on October 24, 1991.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-26195 Filed 10-30-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board will meet in closed session on February 26-27, May 20-21, and October 21-22, 1992 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Defense Science Board will discuss interim findings and tentative recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. app. II, (1988)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: October 25, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-26271 Filed 10-30-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent to Grant Exclusive Patent License

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96-517 as amended by Public Law 98-620, codified at section 208 of title 35, United States Code, the Department of the Air Force announces its intention to grant Aware, Inc., One Memorial Drive, Cambridge, Massachusetts 02142-1301, a corporation of the State of Massachusetts, an exclusive license under United States Patent Application Serial Number 07/760,021, filed 12 September 1991 in the name of Terrence G. Champion for "Multi/Speaker Conferencing Over Narrow Band Channels."

The license described above will be granted unless an Objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patent may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Air Force Legal Services Agency, AFLSA/JACP, 1900 Half Street, SW., Washington, DC 20324-1000, Telephone No. (202) 475-1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-26194 Filed 10-30-91; 8:45 am]

BILLING CODE 3910-01-M

Defense Intelligence Agency

Privacy Act of 1974; Amend a Record System

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Amend System of Records Notice.

SUMMARY: The Defense Intelligence Agency proposes to amend one notice for a system of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The proposed action will be effective on December 2, 1991, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Mr. Michael J. Timko, FOIA/PA Office, ATTN: RTS-1, Defense Intelligence Agency, Washington, DC 20340-3299. Telephone (202) 373-8361 or Autovon 243-8361.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

50 FR 22090, May 29, 1985 (DoD Compilation)
51 FR 30527, Aug. 27, 1986

The amendments are not within the purview of subsection 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, which requires the submission of an altered system report. The specific changes to the record systems (to include bringing the system notice in line with the published exemption rule for the system) are set forth below followed by the record system notice published in their entirety, as amended.

Dated: October 25, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 0660

System name:

Security Files (50 FR 22669, May 29, 1985).

Changes:

* * * * *

System location:

Delete the Zip code and replace with "20340-0001".

* * * * *

Categories of records in the system:

Add "Social Security Number" to the entry.

* * * * *

Purpose(s):

Delete the last paragraph.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add a new paragraph "Information may be disclosed to other Federal agencies, state and local governments, as may have a legitimate use for such information and agree to apply appropriate safeguards to protect the data in a manner consistent with the conditions or expectations under which

the information was provided, collected or obtained."

* * * * *

Exemptions claimed for the system:

Delete entry and replace with "Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(k)(2) and (5), as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 292a. For more information contact the system manager.

* * * * *

LDIA 0660

SYSTEM NAME:

Security Files.

SYSTEM LOCATION:

Defense Intelligence Agency, Washington, DC 20304–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military/civilian applicants and nominees to DIA; current and former DIA and Defense Attache System personnel; and other DoD-affiliated personnel under the security cognizance of DIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records associated with personnel security functions, nomination notices, statement of personal history, indoctrination/debriefing memoranda, secrecy and nondisclosure agreements, certificates of clearance, adjudication memoranda and supporting documentation and in-house investigations, security violations, identification badge records, retrieval indices, clearance status records, and access control records and Social Security Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pursuant to the authority contained in the National Security Act of 1947, as amended, the Secretary of Defense issued Department of Defense Directive 5105.21 which created the Defense Intelligence Agency as a separate agency of the Department of Defense and charged the Agency's Director with the responsibility for the maintenance of necessary and appropriate records and Executive Order 9397.

PURPOSE(S):

Information is collected in order to accomplish those administrative and personnel security functions relating to initial and continued assignment/employment and eligibility for access to classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to other Federal agencies, state and local governments, as may have a legitimate use for such information and agree to apply appropriate safeguards to protect the data in a manner consistent with the conditions or expectations under which the information was provided, collected or obtained.

The "Blanket Routine Uses" published at the beginning of DIA's compilation of record system notices also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated in computer, manual in paper files, or on microform.

RETRIEVABILITY:

Alphabetically by surname of individual or by Social Security Number.

SAFEGUARDS:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

RETENTION AND DISPOSAL:

Records of civilian and military applicants not hired by or assigned to DIA and favorable files of employees departing DIA are maintained up to 1 year and then destroyed. Outprocessing interviews will be retained for 5 years and then destroyed. Indoctrination/debriefing memoranda and non-disclosure agreements pertaining to access to Secret Compartmentalized Information are retained for 70 years or until notification of the death of the signer, whichever is sooner. Files containing information which may conceivably result in litigation and non-Secret Compartmentalized Information security agreements are destroyed when no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Security, Defense Intelligence Agency, Washington, DC 20340–1248.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Freedom of Information Office (RTS–1), Defense Intelligence Agency, Washington, DC 20340–3299.

Your inquiry should include your full name, current address, telephone number, Social Security Number and date of birth. Requests submitted on behalf of other persons must include their written, notarized authorization. Providing of the Social Security Number is voluntary and it will be used solely for verification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Freedom of Information Office (RTS–1), Defense Intelligence Agency, Washington, DC 20340–3299.

Your inquiry should include your full name, current address, telephone number, Social Security Number and date of birth. Requests submitted on behalf of other persons must include their written, notarized authorization. Providing of the Social Security Number is voluntary and it will be used solely for verification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

CONTESTING RECORD PROCEDURES:

DIA rules for access to records and for contesting and appealing initial determination are contained DIA Regulation 12–12; 32 CFR part 292a; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual, other Federal agencies, firms contracted to the DoD and Agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(k)(2) and (5), as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 292a. For more information contact the system manager.

[FR Doc. 91–26272 Filed 10–30–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Logistics Agency

Privacy Act of 1974; Addition of a Record System

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Notice of a New System of Records.

SUMMARY: The Defense Logistics Agency proposes to add a new record system to its inventory of record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 5523a).

DATES: The proposes action will be effective without further notice on December 2, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Ms. Susan Salus, DLA–XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100. Telephone (703) 274–6234 or Autovon 284–6234.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
50 FR 51898, Dec. 20, 1985
51 FR 27443, July 31, 1986
51 FR 30104, Aug. 22, 1986
52 FR 35304, Sep. 18, 1987
52 FR 37495, Oct. 7, 1987
53 FR 04442, Feb. 16, 1988
53 FR 09965, Jun 8, 1988
53 FR 21511, Jun 8, 1988
53 FR 26105, July 11, 1988
53 FR 32091, Aug. 23, 1988
53 FR 39129, Oct. 5, 1988
53 FR 44937, Nov. 7, 1988
53 FR 48708, Dec. 2, 1988
54 FR 11997, Mar. 23, 1989
55 FR 21918, May 30, 1990 (DLA Address Directory)
55 FR 32284, Aug. 8, 1991
55 FR 32947, Aug. 13, 1990
55 FR 34050, Aug. 21, 1990
55 FR 42755, Oct. 23, 1990
55 FR 53178, Dec. 27, 1990
56 FR 5806, Feb. 13, 1991
56 FR 8987, Mar. 4, 1991
56 FR 11207, Mar. 15, 1991
56 FR 19838, Apr. 30, 1991
56 FR 31395, July 10, 1991 (Updated Indexing System)
56 FR 35852, July 29, 1991

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on October 22, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate and the Office of Management and Budget (OMB) pursuant to paragraph 4b of appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals", dated December 12, 1985 (50 FR 52738, December 24, 1985).

Dated: October 25, 1991.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

S850. 10 DCMC–Q

SYSTEM NAME:

Contractor Flight Operations.

SYSTEM LOCATION:

All Defense Logistics Agency activities who approve contractor aircraft flight and ground operations procedures or utilize contractor personnel who operate aircraft for the government. Contact HQ DLA–DCMC–QF, Cameron Station, Alexandria, VA 22304–6190 for a list of current system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All contractor personnel who operate aircraft for the Defense Logistics Agency for which the government assumes some risk of loss or damage. It covers both flight crewmember and noncremember personnel designated by a contractor to conduct flights, perform functions while the aircraft is in flight, or perform ground operations in support of such flights.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; home address and telephone number; date of birth; security clearance data; education; military service data; flight qualification, proficiency, training, and experience records; standardization and evaluation data; safety and mishap records; medical and physiological data; and similar data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Assistant Secretaries of Defense; 10 U.S.C. 2302; Defense Logistics Agency Regulation 8210.1, and Executive Order 9397.

PURPOSES:

Used to monitor and manage individual contractor flight and ground personnel records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THE USES:

Information from this system may be disclosed to the Federal Aviation Agency or the appropriate civil aviation authority or foreign military department in the course of certifying individuals, investigative flight mishaps, and conducting rescue operations.

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks, computers and computer output products.

RETRIEVABILITY:

Filed by name of Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the records or by persons responsible for servicing the record system in performance of their actual duties who are properly screened and cleared for need to know. Records are stored in locked cabinets and rooms are controlled by personnel screening and computer software.

RETENTION AND DISPOSAL:

Records are maintained in the system until contract termination, at which time they will be destroyed if no longer needed.

SYSTEM MANAGER AND ADDRESS:

HQ DLA–DCMC–QF, Cameron Station, Alexandria, VA 22304–6190.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to HQ DLA–DCMC–QF, Cameron Station, Alexandria, VA 22304–6190 or to the system location where the flight certification is recorded. Individuals will be asked to provide name, social security number, or both, to facilitate access.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system of records should address written notarized inquiries to HQ DLA–DCMC–QF, Cameron Station, Alexandria, VA 22304–61i90 or to the system location where the flight certification is recorded. For personal visits, the individual may be asked to show a valid identification card, a drivers' license, or some similar proof of identity.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA

Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided by the individual or from training, evaluation, and examination records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91-26273 Filed 10-30-91; 8:45 am]
BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provision of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee will meet on November 19 and 20, 1991. The meeting will commence at 8:30 am on November 19th at the Naval Weapons Support Center, Crane, Indiana and terminate at 6:30 pm. It will resume at 8:00 am on November 20th at the Naval Avionics Center, Indianapolis, Indiana, and it will terminate at 4:10 pm. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and demonstrations for the Committee on technology transfer programs as they apply to aviation electronics; and Fleet engineering, technical and material support for combat subsystems, equipments and components.

The agenda will include briefings, demonstrations and discussions related to electronic warfare, ceramics, acoustic sensors, microwave components, weapons systems, manufacturing technologies, and aviation electronics. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact:Commander John Hrenko, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: October 23, 1991.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-26241; Filed 10-30-91 8:45 am]
BILLING CODE 3810-AE-F

DELAWARE RIVER BASIN COMMISSION

Revised Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin; Proposed Rule and Public Hearing

AGENCY: Delaware River Basin Commission.

ACTION: Revised proposed rule and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on a revised proposed amendment to its Comprehensive Plan and Water Code in relation to retail water pricing to encourage conservation.

DATES: The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. on Wednesday, December 11, 1991. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

ADDRESSES: The hearing will be held in Bethlehem Town Hall, 10 East Church Street, Bethlehem, Pennsylvania. Written comments should be submitted to Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION:

Background and Rationale

As part of its long-range program to reduce water use throughout the Delaware River Basin, the Commission conducted a hearing on August 14, 1991 (as noticed in the June 7, 1991 and August 6, 1991 issues of the **Federal Register**), on a proposal to adopt policy and regulations dealing with retail water pricing to encourage conservation. Following the September 9, 1991 close of the hearing record, the Commission and its Water Conservation Advisory Committee reviewed the comments and testimony received. The Commission is now revising its proposal to coordinate the proposed policy with the preparation of water conservation plans by individual purveyors.

The subject of the hearing will be as follows:

Amendment to the Comprehensive Plan and Water Code of the Delaware River Basin Relating to Retail Water Pricing to Encourage Conservation.

Article 2 of the Water Code of the Delaware River includes Commission policy relating to conservation, development and utilization of Basin water resources. It is proposed to: Amend the Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin, which is referenced in 18 CFR part 410, by the addition of a new subsection 2.1.2.C and a new section 2.1.7 to read as follows:

2.1.2 New and Existing Users

[A.] * * *

[B.] * * *

C. Owners of water supply systems serving the public (purveyors) seeking approval under section 3.8 of the Compact for a new or an expanded water withdrawal shall include as part of the application, a water conservation plan. The plan shall describe the various programs adopted by the purveyor to achieve maximum feasible efficiency in the use of water.

(1) The water conservation plan shall, at a minimum, describe the implementation of the following programs as required by the Commission:

a. Source metering (Resolution No. 86-12);

b. Service metering (Resolution No. 87-7 Revised);

c. Leak Detection and Repair (Resolution No. 87-6 Revised); and

d. Water Conservation Performance Standards for Plumbing Fixtures and Fittings (Resolution No. 88-2 Revision No. 2).

(2) All applications submitted after June 30, 1992 for a new or expanded water withdrawal that equals or exceeds an average of one million gallons of water per day shall include the following in the water conservation plan:

a. An evaluation of the feasibility of implementing a water conservation pricing structure and billing program as required in section 2.1.7; and

b. Provision of information on the availability of water-conserving devices and procedures (Resolution No. 81-9).

(3) The water conservation plan shall be subject to review and approval by the designated agency in the state where the system is located. The designated state agencies are: Delaware Department of Natural Resources and Environmental Control; New Jersey Department of Environmental Protection and Energy; New York Department of Environmental Conservation; and Pennsylvania Department of Environmental Resources.

(4) The Executive Director shall enter into administrative agreements with each of the designated agencies to administer and enforce the provisions of this regulation. In the absence of an administrative agreement, the Commission shall administer and enforce the regulation.

(5) This regulation shall be effective immediately.

2.1.7 Retail Water Pricing to Encourage Conservation

A. Policy.—It shall be the policy of the Delaware River Basin Commission to promote and support retail water pricing that encourages conservation.

B. Definitions. 1. A water conserving pricing structure is an important demand management tool that provides incentives to consumers to reduce average or peak water use, or both. Conservation pricing reflects the fact that water is a precious resource that should be used in an economically efficient manner. Such pricing includes:

a. Rates designed to recover the full cost of providing service, including a reasonable rate of return on investment; and

b. Timely billing based on metered usage.

Such pricing is also characterized by one or more of the following components:

c. Rates in which the unit price of water per class of customer (residential, industrial, etc.) is constant within each class regardless of the quantity of water used (uniform rates) or increases as the quantity of water used increases (increasing block rates);

d. Seasonal rates or excess-use surcharges to reduce peak water demands during summer months; or

e. Rates based on the long-run marginal cost or the cost of adding the next unit of water supply to the system.

2. A nonconserving pricing structure is one that provides no incentives or disincentives to consumers to reduce water use. Such pricing may be characterized by one or more of the following components:

a. Rates in which the unit price of water within any one class of customer decreases as the quantity of water used increases (decreasing block rates);

b. Rates that involve charging customers a set fee per unit of time regardless of the quantity of water used (flat rates);

c. Pricing that does not reflect the full cost of providing services; or

d. Pricing in which the typical bill is determined mainly by a minimum charge and metered usage has little impact on the total bill.

C. Criteria. 1. All purveyors are encouraged to evaluate alternative pricing structures with the objective of adopting a water conserving pricing structure.

2. A purveyor seeking approval under section 3.8 of the Compact for a new or expanded water withdrawal that would equal or exceed an average of one million gallons of water per day shall include in its water conservation plan submitted as part of the application, an evaluation of the feasibility of implementing a water conserving pricing structure and billing program. The evaluation shall, at a minimum, consider:

a. The potential change in the quantity of water demanded for customer classes during both peak and non-peak periods stemming from alternative water conservation pricing structures;

b. The potential revenue effects of the alternative pricing structures;

c. Any legal or institutional problems associated with implementing a water conservation pricing structure; and

d. How conservation pricing could be coordinated with other conservation programs and measures to reduce both average and peak water use.

3. The requirement set forth in (2) shall be waived if the purveyor either documents it has adopted a water conserving pricing structure or is in the process of implementing such a pricing structure in accordance with a Commission schedule or a schedule established by the appropriate state public utility commission.

4. The Executive Director shall annually review the definitions and criteria set forth herein to determine their adequacy in promoting and supporting water pricing that encourages water conservation.

5. This resolution shall be effective immediately.

* * * * *

(Delaware River Basin Compact, 75 Stat. 688)

Dated: October 25, 1991.

Susan M. Weisman,

Secretary.

[FR Doc. 91-26239 Filed 10-30-91; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans. This notice also describes the functions of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: November 14, 1991—8 a.m. to 1:30 p.m. and 3:30 p.m. to 6 p.m.

ADDRESSES: Hotel Washington, 15th and Pennsylvania, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: John Florez, Executive Director, White House Initiative on Educational Excellence for Hispanic Americans, U.S. Department of Education, Washington, DC 20202. Telephone (202) 401-0747.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order 12729.

The Commission is established to advise the Secretary of Education on the educational status of Hispanic Americans, including the progress of Hispanic Americans towards achievement of the national educational goals, and on Federal efforts to promote quality education for Hispanic Americans. The meeting of the Commission is open to the public. The agenda includes: Swearing-in of Commission members, orientation, meeting with Secretary of Education Lamar Alexander, review of White House Initiative Mission and Workplan, and discussion of educational issues and priorities.

Records are kept of all Commission proceedings, and are available for public inspection at the White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Avenue, SW., room 2149, Washington, DC 20202-6135 from the hours of 8 a.m. to 5 p.m.

Daniel Bonner,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91-26199 Filed 10-30-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. G-4880-001, et al.]

Maxus Exploration Co., et al., Applications for Termination or Amendment of Certificates[1]

October 24, 1991.

Take notice that each of the applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 17, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-4880-000, B, 9-9-91	Maxus Exploration Co., 717 N. Harwood Street, Suite 3100, Dallas, TX 75201-6505.	Phillips 66 Natural Gas Co., Panhandle-Hugoton Area, Gray County, TX.	Wells deleted from the exchange agreement effective 7-1-90.
CI91-129-000 (CI80-53), D, 9-23-91.	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253-3725.	Columbia Gas Transmission Corp., Vermillion Blocks 276 & 287, Offshore, LA.	Assigned 1-1-91 to Newfield Exploration Co.
CI91-130-000 (G-9356), D, 9-26-91.	BHP Petroleum (Americas) Inc., 5847 San Felipe, Suite 3600, Houston, TX 77057.	Transcontinental Gas Pipe Line Corp., La Gloria Field, Brooks & Jim Wells Counties, TX.	Assigned 12-1-90 to Geodyne Nominee Corp.
CI91-131-000 (CI76-251) D, 9-26-91.	BHP Petroleum Co., Inc., 5847 San Felipe, Suite 3600, Houston, TX 77057.	Texas Eastern Transmission Corp., Anna Barre Field, Dewitt County, TX.	Assigned 12-1-90 to Geodyne Nominee Corp.
CI91-132-000 (CI72-844), D, 9-26-91.	BHP Petroleum Co., Inc	Trunkline Gas Co., Chritmas and Nordheim Fields, Dewitt County, TX.	Assigned 12-1-90 to Geodyne Nominee Corp.
CI91-133-000 (CI78-154), D, 9-26-91.	BHP Petroleum Co., Inc	Texas Eastern Transmission Corp., Hico Knowles Field, Lincoln Parish, LA.	Assigned 12-1-90 to Geodyne Nominee Corp.
CI91-134-000 (CI65-424), D, 9-26-91.	BHP Petroleum (Americas) Inc	Transcontinental Gas Pipe Line Corp., Johnson's Bayou Field, Cameron Parish, LA.	Assigned 12-1-90 to Geodyne Nominee Corp.
CI91-135-000 (G-9357), D, 9-26-91.	BHP Petroleum Co., Inc	Natural Gas Pipeline Co. of America, La Gloria Field, Brooks and Jim Wells Counties, TX.	Assigned 4-18-91 to Geodyne Nominee Corp.
CI91-136-000 (CI67-1620), D, 9-26-91.	BHP Petroleum (Americas) Inc	United Gas Pipe Line Co., Bayou St. Vincent Field, Assumption Parish, LA.	Assigned 12-1-90 to Geodyne Nominee Corp.
CI91-137-000 (G-10774), D, 9-26-91.	BHP Petroleum Co., Inc	Southern Natural Gas Co., Bear Creek Field, Bienville Parish, LA.	Assigned 12-1-90 to Geodyne Nominee Corp.
CI92-2-000 (CI65-1264), D, 10-4-91.	Union Oil Co. of CAL, 1201 West 5th Street, P.O. Box 7600, Los Angeles, CA 90051.	Arkla Energy Resources, a division of Arkla, Inc., Northeast Arnes Field, Major County, OK.	Assigned 3-1-90 to Grace Petroleum Corp.
CI92-3-000 (CI69-02), D, 10-9-91.	Maxus Exploration Co	Colorado Interstate Gas Co., Wamsutter Field, Sweetwater County, WY.	Assigned 7-1-90 to Equitable Resources Energy Co.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 91-26209 Filed 10-30-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GP91-16-000]

Mississippi Oil and Gas Board Tight Formation Determination Mississippi-4 LT-3 Tuscaloosa Formation in the Maxie Field FERC No. JD91-07190T; Preliminary Finding

October 25, 1991.

On June 4, 1991, the Commission received a notice of determination from the State Oil and Gas Board of Mississippi (Mississippi) designating the LT-3 Tuscaloosa Formation (LT-3 zone) in the Maxie Field, in Forrest County, Mississippi, as a tight formation. The determination, made pursuant to section 107(b) of the NGPA and § 271.703(c) of the Commission's regulations, covers sections 1, 2, 11, and 12 in T1S, R13W, sections 4 through 7 in T1S, R12W, and sections 31 through 33 in T1N, R12W, Forrest County, Mississippi. For the reasons described below, the Commission issues this preliminary finding that Mississippi's determination is not supported by substantial evidence.

Background

Mississippi's notice shows that the producing interval in the LT-3 zone was discovered by the Ohio Oil Company (now Marathon Oil Company) in 1952. Mississippi states that the original permeability to air of the LT-3 zone was 50 millidarcies (md), that 10 wells were drilled and completed in the LT-3 zone between 1953 and 1955, and that the formation originally had 70 feet of maximum net pay at 3,800 psi of reservoir pressure, with a 47% water saturation from long calculations. Mississippi also states that the production and pressure history of the Maxie Field LT-3 zone wells indicates the presence of moderate water drive within the formation, and that an increase in water saturation to about 57% of the pore volume caused a substantial decrease in permeability to gas. Marathon Oil Company studies placed the reduction at 1/100th of the original permeability once water saturation reached approximately 58% of the original pore volume.

Mississippi's notice shows that prior production from the LT-3 zone peaked at approximately 1 Bcf of gas per month. The notice also shows that all LT-3

completions were plugged by 1973 and that the wells where recompleted into uphole zones. The cumulative production from the LT–3 zone totalled 25.9 Bcf out the estimated 90 Bcf in place, for a recovery factor of 29 percent; leaving at least 64 Bcf in place.

The Commission staff tolled the 45-day period for Commission review by letter dated July 19, 1991.[1] The Commission staff's letter advised Mississippi that the application appeared to pertain to a secondary recovery project in a partially depleted water-drive reservoir and requested that Mississippi provide an explanatory statement, pursuant to § 274.104(a)(6) of the regulations, showing why it believes that the LT–3 Tuscaloosa Formation in the Maxie Field, meets the Commission's guidelines and intent for designation as a tight formation.

Mississippi's September 10, 1991, response reaffirmed its determination on the basis that the *in situ* gas permeability is currently less than 0.01 md and that the formation exhibits low flow rate characteristics. Mississippi states that "although this is an unusual tight formation recommendation, the Commission's technical staff concurs that the requested formation meets the statutory definition and should be designated as a tight formation." Mississippi further states the low permeability problem is not the result of a partially depleted water drive reservoir as implied in the Commission staff's letter but appears to be caused by the dual phase flow once relatively small volumes of water appeared at the well bores and that once low permeability developed the flow rate did not exceed 300 MCF/D which is well within the Federal Energy Regulatory Commission's guidelines.

Information in the notice of determination indicates that Spooner acquired Marathon Oil Company's Maxie Field interests in the LT–3 Tuscaloosa reservoir, and proposes to drill a single horizontal well with a horizontal completion zone length of approximately 2,500 feet to recover as much of the remaining gas in place as possible. Spooner describes the project as a "secondary gas recovery project" which could recover as much as 30 Bcf of gas and 600,000 barrels of condensate. Spooner's reservoir engineering consultants suggest that due to the poor permeability currently exhibited in the reservoir, a co-production project will be necessary to recover the reserves.

[1] Under § 275.202(b), the 45-day review period commences when a response is received to a tolling letter.

Discussion

In order to qualify a formation as a tight formation, section 271.703(c)(2)(i)(A) of the Commission's regulations requires the jurisdictional agency to determine that the expected in situ gas permeability throughout the pay section is 0.1 millidarcy (md) or less. Section 271.703(c)(2)(i)(B) of the regulations requires the jurisdictional agency to determine that the expected value for the formation's pre-stimulation stabilized flow rate against atmospheric pressure of wells completed for production in the formation are not expected to exceed the applicable maximum allowable flow rate specified in the table in that section.

These guidelines were adopted in the Interim Regulations and the Final Regulations adopted in Order No. 99 [3] implementing the tight formation incentive price program under section 107(b) of the NGPA. Order No. 99 defines a "tight formation" as follows:

> A "tight formation" is a sedimentary layer of rock cemented together in a manner that greatly hinders the flow of any gas through the rock.

The Commission also stated in both the Interim Rule and Order No. 99 that "the objective of the rule is to identify and provide incentives for the development of tight formations, not to provide incentives to develop all formations with low prestimulation production rates." (emphasis added)

Based on the evidence in the record, the Commission finds that the current permeability and flow rate in the LT–3 zone is caused by the influx of formation water and the resulting dual phase flow which causes a permeability reduction. The current flow rate and permeability characteristics are not the result of the way in which the rock was cemented together. Mississippi's response to the Commission staff's tolling letter confirms this finding. It is clear that any future production from the LT–3 zone would be the result of a secondary recovery project in a partially depleted conventionally produced water-drive reservoir. Consequently, although the LT–3 zone currently exhibits low permeability and production characteristics which do not exceed the limits for designating tight formations, the Commission finds that the LT–3 zone is not a tight formation within the meaning of NGPA section 107(c)(5) and § 271.703 of the Commission's regulations.

Under § 275.202(a) the Commission may, before any determination becomes final, make a preliminary finding that the determination is not supported by substantial evidence in the record. Based on the foregoing facts and circumstances, the Commission hereby makes a preliminary finding that the subject determination submitted by the State Oil and Gas Board of Mississippi is not supported by substantial evidence in the record upon which the determination was made. Mississippi or the applicant may, within 30 days after issuance of this preliminary finding, submit written comments and may request an informal conference with the Commission pursuant to § 275.202(f) of the regulations. A final Commission order will be issued within 120 days after issuance of this preliminary finding.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–26265 Filed 10–30–91; 8:45 am]

BILLING CODE 6717–01–M

[2] A co-production project is one which involves the simultaneous production of gas and water in an attempt to produce and remove formation water from the reservoir at a higher rate than water influxes into the reservoir.

[3] FERC Statutes and Regulations, Regulations Preambles 1977–1981 ¶30,183.

[Docket Nos. EC92–1–000 and EL92–5–000]

Commonwealth Atlantic Limited Partnership; Amended Filing

October 23, 1991.

Take notice that on October 23, 1991, Commonwealth Atlantic Limited Partnership ("Commonwealth") filed a supplement to its October 10, 1991, application for the Commission to disclaim jurisdiction under section 203 of the Federal Power Act, 16 U.S.C. 824b, or, in the alternative, to grant authorization under Section 203 and waive part 33 of the Commission's regulations, 18 CFR part 33, with respect to proposed changes in Commonwealth's ownership structure and the contemplated disposition of the general partnership interest in Commonwealth to an investor that will not be an electric utility or an affiliate of an electric utility. The supplement provides additional information regarding: (1) The ownership interest to be held by the new general partner that will be admitted in Phase 3 of the restructuring; and (2) the need for

expedited action by the Commission. The supplement also includes a petition for a declaratory order that the Commission does not need to re-examine Commonwealth's rates or the waivers previously granted as a result to the proposed changes in ownership structure.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 18 CFR 385.214. All such motions or protests should be filed on or before November 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-26266 Filed 10-30-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-79-NG]

EnMark Gas Corp.; Application to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on September 27, 1991, of an application filed by EnMark Gas Corporation (EnMark) requesting blanket authorization to export up to 40 Bcf of natural gas to Mexico over a two-year period commencing with the date of first delivery. EnMark intends to use existing U.S. pipeline facilities which interconnect with Mexican pipeline facilities at various points on the U.S./Mexican border. EnMark states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, December 2, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: EnMark, a Texas corporation with its principal place of business in Dallas, Texas, is a purchaser of gas for resale from non-affiliated producers and sellers. EnMark's affiliated company is Vail Energy Corp. dba EnMark Gas Gathering which is a producer and seller of natural gas from onshore of the United States.

EnMark states that it expects to enter into short and intermediate term arrangements, with individually-negotiated terms, including price and volume. EnMark states that each transaction will be responsive to market conditions and competitive with the markets being served.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedure

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is

necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of EnMark's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 25, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–26292 Filed 10–30–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–82–NG]

Maple Gas Corp.; Application for Blanket Authorization To Export Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 8, 1991, of an application filed by The Maple Gas Corporation (Maple) requesting blanket authorization to export to Mexico up to 150,000 MMBtu per day of natural gas over a two-year term beginning on the date of first delivery. The proposed exports would take place at any point on the international border where existing pipeline facilities are located. Maple intends to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, December 2, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6116.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Maple is a Delaware corporation with its principal place of business in Dallas, Texas. Maple proposes to export natural gas to Mexican purchasers for varying terms but not to exceed one year. The identity of actual purchasers is presently unknown but would be reported in Maple's quarterly filing with DOE. According to Maple, the gas to be exported would be purchased from U.S. producers and would be surplus to domestic need. All sales would result from arms-length negotiations and prices would be determined by market conditions.

The decision on the application for export authority will be made consistent with the DOE's gas export policy, under which a national or regional need for the gas to be exported is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Maple asserts that its proposed export of natural gas will benefit both U.S. producers and consumers by increasing the demand for domestically produced natural gas. The additional demand will encourage U.S. producers to take action to increase the supply of natural gas and will benefit domestic consumers by maintaining an infrastructure to supply natural gas during a period when domestic markets are not sufficient to support the existing infrastructure. Maple also asserts that in light of the prevailing gas surplus, there exists no national or regional need for the gas proposed for export. Moreover, Maple notes that the short-term nature of the requested export authorization protects against the possibility that a national or regional need for these supplies might develop in the future. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that if DOE approves this requested blanket export authorization, it may designate a total authorized volume for the two-year term, or approximately 109.5 Bcf of natural gas, rather than the 150,000 MMBtu per day requested by Maple, in order to maximize the applicants flexibility of operation.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notice of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notice of intervention, request for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for

a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Maple's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 25, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–26293 Filed 10–30–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–58–NG]

Northern Natural Gas Co.; Order Granting Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northern Natural Gas Company blanket authorization to import up to 219 Bcf of natural gas, over a two-year period commencing with the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 25, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–26294 Filed 10–30–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–73–NG]

Oryx Gas Marketing Limited Partnership; Application To Import and Export Natural Gas Including LNG From and to Canada, Mexico and Other Countries

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas, including LNG, from and to Canada, Mexico and other countries.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 6, 1991, of an application filed by Oryx Gas Marketing Limited Partnership (Oryx) for blanket authorization to import up to 200 Bcf and to export up to 200 Bcf of natural gas, including LNG, from and to Canada, Mexico and other countries over a two-year term beginning on the date of first delivery. Oryx intends to utilize existing pipeline and LNG facilities for the transportation of the volumes to be imported and exported and to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, December 2, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Oryx is a limited partnership formed pursuant to the Delaware Revised Uniform Limited Partnership Act. Oryx is acting through its managing general partner, Oryx Energy Company, a Delaware corporation with its principal place of business in Dallas, Texas. Oryx is a wholly-owned subsidiary of Oryx Energy Company and a natural gas marketer active in arranging sales and transportation of natural gas in the United States.

The decision on the Oryx's request for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing the proposed export application, domestic need for the gas will be considered, and any other issue determined to be appropriate. Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority, and on the domestic need for the gas the applicant proposes to export. The applicant asserts that imports made under this arrangement will be competitive and there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of

intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notice of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Oryx's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday though Friday, except Federal holidays.

Issued in Washington, DC, October 25, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–26295 Filed 10–30–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–57–LNG]

Pan National Gas Sales, Inc.; Application To Import Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on August 1, 1991, of an application filed by Pan National Gas Sales, Inc. (Pan National) requesting blanket authorization to import on a short-term or spot basis up to 320 billion cubic feet (Bcf) of liquefied natural gas (LNG) over a two-year period beginning with the date of first delivery. Pan National intends to use existing U.S. LNG facilities and to import LNG from a variety of international sources in which trade in natural gas has not been prohibited. Pan National states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, December 2, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION: Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7249.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Pan National, a Delaware corporation with its principal place of business in Houston, Texas, is a wholly-owned subsidiary of Panhandle Eastern Corporation. Pan National functions as an importer of LNG and a marketer of regasified LNG in the United States. The company intends to import the LNG for its own account or for the account of others.

The gas imported by Pan National would be sold on a short-term or spot market basis to U.S. pipelines, distribution companies, marketers, and/or end-users under contracts to be negotiated. The identities of the actual international sources of LNG, U.S. purchasers and transporters of the volumes to be imported will not be known until Pan National begins to enter into specific import transactions. In its application, Pan National states that it understands that additional authority may be required from other governmental agencies to import the LNG into existing LNG facilities.

The decision on this import application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the

application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Pan National's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 26 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-26296 Filed 10-30-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-72-NG]

Sun Operating Limited Partnership; Application To Import and Export Natural Gas Including LNG From and to Canada, Mexico and Other Countries

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas, including LNG from and to Canada, Mexico and other countries.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 6, 1991, of an application filed by Sun Operating Limited Partnership (SOLP) for blanket authorization to import up to 200 Bcf and to export up to 200 Bcf of natural gas, including LNG, from and to Canada, Mexico and other countries over a two-year term beginning on the date of first delivery. SOLP intends to utilize existing pipeline and LNG facilities for the transportation of the volumes to be imported and exported and to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, December 2, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9394.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: SOLP, a natural gas producer active in arranging sales and transportation in the United States, now seeks to expand its activities to Mexico and Canadian markets. SOLP is a limited partnership formed pursuant to the Delaware Revised Uniform Limited Partnership Act. SOLP is acting through its managing general partner, Oryx Energy Company, a Delaware corporation with its principal place of business in Dallas, Texas.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing the proposed export application, domestic need for the gas will be considered, and any other issue determined to be appropriate. Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority, and on the domestic need for the gas the applicant proposes to export. The applicant asserts that imports made under this arrangement will be competitive and there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are

specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of SOLP's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 25, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–26297 Filed 10–30–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–52–NG]

Texaco Gas Marketing Inc.; Order Granting Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Texaco Gas Marketing Inc. blanket authorization to export a total of 80 Bcf of U.S. natural gas to Canada over a two-year period commencing with the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 25, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–26298 Filed 10–30–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of September 27 through October 4, 1991

During the week of September 27 through October 4, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 24, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 27 through October 4, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 30, 1991	Agco, Inc., Russell, KA	RR272–83	Request for modification/rescission in the crude oil refund proceeding. *If granted:* The January 3, 1990 Decision and Order (Case No. RF272–75863) would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Oct. 1, 1991	James L. Schwab, Spokane, WA	LFA–0155	Appeal of an information request denial. *If granted:* The September 24, 1991 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and James L. Schwab would received access to records regarding the investigation of his health and safety complaints at the Tonopah Test Range.
Oct. 1, 1991	United Union of Roofers, Waterproofers & Allied Workers Seattle, WA.	LFA–0154	Appeal of an information request denial. *If granted:* The United Union of Roofers, Waterproofers & Allied Workers would receive access to the deleted information from Certified Payroll Records for Covington-Rockdale Project No. DE–AP79–91 BP16960.
Oct. 2, 1991	The Gazette Newspapers, Schenectady, NY	LFA–0156	Appeal of an information request denial. *If granted:* The August 15, 1991 Freedom of Information Request Denial issued by the Naval Reactors Office would be rescinded and the Gazette Newspapers would receive access to DOE information.

Date received	Name of refund proceeding/name of refund application	Case No.
1/30/91	John Roger Crawford	RF315-10169
1/30/91	Robert Dale Crawford	RF315-10170
9/30/91	Jennings' Arco & Auto Sales.	RF304-12506
9/30/91	Howard Oil Co. Inc.	RF339-5
9/30/91	Master Gas Service Company.	RF340-19
9/30/91	James Petroleum Corp	RF328-4
10/1/91	Frazier's Parkway Shell	RF315-10171
10/1/91	Davis Arco	RF304-12507
10/1/91	Westfield Arco	RF304-12508
10/1/91	State of Rhode Island	RF336-26
10/1/91	Enron Corportation	RF342-2
10/1/91	Callis-Turner Farm Supply.	RF335-43
10/1/91	E.J. Bill Green	RF342-3
10/2/91	Adam's Shell	RF315-10172
10/3/91	Plymouth Oil Inc.	RF342-4
10/3/91	Robert R. Mitchell Co., Inc.	RF333-16
1p/3/91	Shaner Brothers	RF333-17
10/3/91	Thomas Oil Co., Inc.	RF330-55
10/4/91	Rocket Port Arco	RF304-12509
10/4/91	Midwest Industrial Fuel, Inc.	RF309-1421
9/27/91 thru 10/4/91.	Texaco Refund Applications Received.	RF321-16959 thru RF321-17404
9/27/91 thru 10/4/91.	Crude Oil Refund Applications Received.	RF272-90007 thru RF272-90173
9/27/91 thru 10/4/91.	Gulf Oil Refund Applications Received.	RF300-17779 thru RF300-17888

[FR Doc. 91-26299 Filed 10-30-91; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Second State Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of second stage special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be used by state governments for filing Second Stage Applications for Refund from a fund of $1,585,106 obtained from Time Oil Company, in settlement of enforcement proceedings brought by the DOE.

ADDRESSES: Applications for refund should conspicuously display a reference to case number LQF-0038, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds remaining after the conclusion of the first stage refund proceeding obtained as a result of a settlement between Time Oil Company and DOE. The Consent Order entered in the case settled nearly all disputes between DOE and Time concerning possible violations of DOE price regulations with respect to the firm's sale of refined petroleum products during the period November 1973 through January 1981.

The state governments listed in the Appendix to the Decision and Order set out below may file Applications for Refund. All Applications should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1 and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: October 25, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Second-Stage Refund Procedures

Name of Petitioner: Time Oil Company.
Date of Filing: October 16, 1991.
Case Number: LQF-0038.

This determination announces completion of the first-stage refund process for distributing $1,187,500 plus interest which the Department of Energy (DOE) received from Time Oil Company (Time) under a 1982 consent order, settling alleged violations of the DOE price regulations in sales of refined petroleum products during the period November 1973 through January 1981. Approximately $1.5 million in principal and interest remains in the Time escrow account after all the first-stage refund claims have been processed and determinations issued. This Decision discusses how these unclaimed funds will be distributed.

I. Background

The funds at issue in this proceeding were obtained from Time through a December 13, 1982 consent order with the DOE. See 48 FR 325 (1983). The consent order made available $1,187,500 for restitution to persons injured by Time's alleged violations of the DOE price regulations. Final procedures for refunding the money in the Time escrow account to injured persons were established in Time Oil Company, 20 DOE ¶ 85,698 (1990) (hereinafter cited as Time). As stated in Time, in the initial stage of the two-stage refund process, the Defense Fuel Supply Center (DFSC) and purchasers of Time covered products other than jet fuel during the consent order period could submit Applications for Refund. *Id.* at 89,621.

As of October 16, 1991, the OHA had received 10 first-stage claims from injured parties, including the DFSC, and disbursed nearly $720,000 in principal and interest from the interest-bearing Time escrow account to claimants. All but one of these claims have now been decided, a sufficient reserve for that claim has been calculated, and new applications will no longer be accepted. There is approximately $1.5 million, including interest, remaining in the Time escrow account.

II. Distribution of Remaining Funds

As explained in the OHA's 1990 Time Decision, the remaining funds will be distributed as "second-stage refunds" to state governments for indirect restitution. Only the seven states in which Time sold covered product between November 1973 and January 1981 are eligible to participate, since they were identified as injured parties in a DOE order issued before the enactment of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). Time at 89,626. These seven states are: Washington, Oregon, California, Idaho, Montana, Nevada and Hawaii. *Id.* at 89,620. Each state's portion of the remaining funds was calculated according to the share of Time's total volume of gasoline sold in that state during the relevant period. Those funds will be allocated to the seven identified states in proportions equal to those specified in the Time consent order. The respective states' shares are listed in the Appendix to this Decision.

III. Application Procedure

Funds will be disbursed upon the approval of a plan for spending the money submitted by the eligible state. These plans should meet the general restitutionary objective of this proceeding. Plans will be scrutinized to ensure that administrative costs are minimized (less than 5 percent of the funds received by the state). Refunds may be used for new energy-related projects, but they must not be used to implement projects or programs that would be funded regardless of this distribution. In other words, the refund money distributed must be used to supplement, not supplant, any state or federal funds which are already budgeted for those purposes. Each program must be implemented within a reasonable period following receipt of the funds. Any interest earned after refund monies have been disbursed shall be allotted to the projects approved by OHA.

Each state should notify affected members of the public that it is eligible to receive a refund in this case. See Charter Co., 12 DOE § 85,208 (1985) at 88,657-8. The public should

be informed about the type of restitutionary plan which each state proposes to submit for approval of the OHA, and afforded an opportunity to contribute its ideas in the course of that process. Each application submitted must contain a statement describing the type of notice that was provided in the course of preparing the proposed plan. *Id.*

Each plan submitted should follow the broad guidelines discussed above, and must include the following information: (1) A description of the programs to be funded; (2) the time frame for implementation of the programs; (3) a statement explaining whether each program is an enlargement of an existing program or a new project; (4) an explanation of the manner in which consumers of refined petroleum products will benefit from the programs; (5) a statement certifying that the submitting agency has authority under state law to submit the plan; (6) a statement describing the type of public notice that was provided by the state government in the course of preparing the proposed plan; and (7) a statement committing the agency or office responsible for administering the plan to file with the OHA a post-plan report, which will include a certification that the funds were spent in accordance with the DOE-approved plan.

These procedures have been used by the OHA to ensure that indirect restitution of oil overcharges to the states is proportional to the injury experienced and provides timely restitutionary benefits. For more information about this process, see "A Report on State Expenditures of Oil Overcharges," DOE Publication No. DOE/HG–003 (January 1990).

It Is Therefore Ordered That:

(1) The states set forth in the appendix to this Decision and Order may submit plans for the use of the remainder of the funds in the Time Oil Company escrow account. Each state's share of those funds including interest as of October 16, 1991 is set forth in the Appendix. The funds allocated to each state shall be paid out upon OHA's approval of each plan.

(2) This is a final Order of the Department of Energy.

Dated: October 25, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX—STATES' SHARES OF UNCLAIMED TIME OIL COMPANY FUNDS

States	Ratio [1]	Amount available [2]
California	29.97	$475,056
Hawaii	1.22	19,338
Idaho	2.17	34,397
Montana	1.08	17,119
Nevada	3.26	51,675
Oregon	13.35	211,612
Washington	48.95	775,909
Total	100.00	1,585,106

[1] Source: From Consent Order, which lists the dollar amounts to be paid to the seven states in which Time products were sold, based on the amount available for such payments after payout to DFSC ($862,500).

[2] This figure is the ratio multiplied by the amount remaining in the escrow account which has been adjusted to reserve sufficient funds for the final first-stage refund applicant. The adjusted amount, as of September 30, 1991, is $1,585,106, including interest.

[FR Doc. 91–26300 Filed 10–30–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4027–27–3]

Class II Underground Injection Control Program Advisory Committee Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advisory committee meetings.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice of the next meeting of the Advisory Committee on EPA's class II (oil and gas related) underground injection control program.

The purpose of the meeting is to further discuss the issues surrounding the guidances, construction, and areas of review requirements for class II underground injection wells.

DATES: On Tuesday, November 19, the meeting will begin at 9 a.m. and end at 5 p.m. On Wednesday, November 20, the meeting will begin at 8:30 a.m. and end at 3:30 p.m.

ADDRESSES: The meeting will take place at the Stouffer Concourse Hotel (Crystal City), 2399 Jefferson Davis Highway, Arlington, Virginia, 22202. The local phone number is 703–418–6800.

FOR FURTHER INFORMATION CONTACT: If you need further information on substantive issues, please contact Jeffrey Smith, EPA, Office of Water, at (202) 260–5586. If you need information on administrative matters, please contact Angela Suber, EPA, Regulatory Development Branch, at (202) 260–7205, or John Lingelbach, Committee Co-Chair, at (202) 887–1037.

Dated: October 25, 1991.

Chris Kirtz,

UIC Advisory Committee Designated Federal Official.

[FR Doc. 91–26324 Filed 10–30–91; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00310; FRL 4001–1]

Clinical Methodologies for Measuring Cholinesterases; Open Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open workshop.

SUMMARY: There will be a 2-day workshop to discuss clinical methodologies for measuring cholinesterases in laboratory animals and man. Invited guest speakers and participants are recognized experts on the subject and will facilitate discussions of their respective portion of the agenda. The Office of Pesticide Programs in cooperation with a contractor, Eastern Research Group, Inc., are organizing this educational and instructive workshop on cholinesterases. Recommendations from this workshop will be used by the Agency in development of clinical cholinesterase methodologies and possibly bioassays for evaluating cholinesterase inhibiting pesticides. The meeting will be open to the public.

DATES: The meeting will be held on Wednesday, December 4 and Thursday, December 5, 1991, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at: Sheraton Crystal City Hotel 1800 Jefferson Davis Highway Arlington, VA 22202, (703)–486–1111.

Copies of documents related to the agenda topics may be obtained by contacting: By mail: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 1128 Bay, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–2805.

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, Office of Pesticide Programs, (H7509C), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 821C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557–4369.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following topics:

Session I. Chemistry/biology of esterases

Characteristics of esterases,

Factors affecting cholinesterase inhibition.

Session II. Methods for measuring cholinesterase inhibition.

Session III. Cholinesterase measurements: variabilities observed in conduct and results

Review of historical control data,

Review of bioassays submitted to the Agency.

Section IV. Protocol/guidelines for cholinesterase determinations.

Section V. Future direction/research needs for evaluating and measuring cholinesterase inhibition.

Any member of the public wishing to submit written comments should contact Mr. Robert B. Jaeger at the address or the phone number given above to be sure that the meeting is still scheduled and to confirm the workshop agenda. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advance notice to Mr. Robert B. Jaeger, interested persons may be permitted by the chairman of the workshop to present oral statements at the meeting. Written comments should be brief, to the point, and preferably 1–2 pages per topic. Oral statements before the workshop will be limited to approximately 3 minutes each. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Information submitted as a comment in response to this notice must not be claimed as "Confidential Business Information" (CBI). The public docket will be available for public inspection in Room 1128 Bay at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the workshop participants.

Persons wishing to make oral and/or written statements should notify Mr. Robert B. Jaeger and submit copies of these statements no later than November 22, 1991, in order to ensure appropriate consideration by the workshop participants.

A workshop report will be prepared by the participants and will be available 30 working days after the meeting and may be obtained by contacting the Public Docket and Freedom of Information Section at the address or telephone number given above.

Dated: October 24, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91–26325 Filed 10–30–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Revision of 3067–0132.

Title: Cost Allocation Plan.

Abstract: The Office of Management and Budget (OMB) Circular A–87, Cost Principles for State and Local Governments, establishes principles and standards for determining costs applicable to grants for State and local governments. Included are indirect costs, which are costs of an organization that are not readily assignable to a particular grant project, but are necessary to the operation of the organization and the performance of a project. Cost Allocation Plans are submitted by States when they are requesting approval of their indirect costs. The plans contain the costs of central support services supplied by the State. Plans provide information on a State's administrative expenses for accounting services, disbursement activities, property, accountability, employee personnel matters, etc.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 1,000 Hours.

Number of Respondents: 25.

Estimated Average Burden Hours per Response: 40 Hours.

Frequency of Response: Annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: October 18, 1991.

Wesley C. Moore,

Director Office of Administrative Support.

[FR Doc. 91–26259 Filed 10–30–91; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of Oakland, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010910–003

Title: Port of Oakland/Neptune Orient Lines, Ltd., et. al. Nonexclusive Preferential Assignment Agreement.

Parties: Port of Oakland (Port), Neptune Orient Lines, Ltd. (NOL), Orient Overseas Container Line, Ltd. (OOCL), Nippon Liner Systems, Ltd. (NLS).

Synopsis: The amendment provides for proration of certain compensation provisions in the event of termination of use of the Assigned Premises by one of the Assignee lines, deletion of additional charges for local and Interior Point Intermodal Throughput Service cargo under certain specified conditions, for modification of the requirements for cancellation of the Agreement, and to reflect that NAVIX LINE, the parent corporation of NIPPON LINER SYSTEMS, LTD. assumed the place of NLS under the Agreement.

Agreement No.: 224–200147–003.

Title: Jacksonville/Sea-Land Terminal Agreement.

Parties: Jacksonville Port Authority, Sea-Land Service, Inc.

Synopsis: The proposed amendment would extend the term of the Agreement for a period of five years, through October 31, 1996.

Agreement No.: 224–200280–001

Title: Port of Seattle/Clipper Navigation, Inc. Terminal Agreement.

Parties: Port of Seattle, Clipper Navigation, Inc. ("Clipper").

Synopsis: The proposed amendment reflects an enlargement of the premises leased to Clipper under the Agreement and a corresponding adjustment in the rents payable.

Agreement No.: 224–200586.

Title: City of Los Angeles/Stevedoring Services of America Nonexclusive Preferential Crane Assignment.

Parties: City of Los Angeles Harbor Department (LA), Stevedoring Services of America (SSA).

Synopsis: The agreement authorizes LA to assign to SSA the nonexclusive

preferential use of three cranes owned by the Los Angeles Harbor Department.

Agreement No.: 213–010786–006.

Title: Compania Trasatlantica Espanola SA, Contship Container Lines Limited, and Italia Di Navigazione SpA, Space Charter and Sailing Agreement.

Parties: Compania Trasatlantica Espanola SA, Contship Containerlines Limited, Italia di Navigazione S.p.A., D'Amico Societa de Navazione per Azioni.

Synopsis: The modification would restate the Agreement, delete D'Amico Societa de Navazione per Azioni as a party to the Agreement, establish both the maximum number of vessels to be operated under the Agreement and their maximum capacities, and make other administrative changes.

Agreement No.: 202–010979–017.

Title: Caribbean Shipowners Association.

Parties: Tropical Shipping & Construction Co., Ltd., Trailer Marine Transport Corporation, Sea-Land Service, Inc., Puerto Rico Maritime Shipping Authority, Tecmarine Lines, Inc., Bernuth Lines, Ltd., Sea-Barge Group, Inc., Seaboard Marine, Ltd., West Indies Shipping Corporation (WISCO), Kirk Line, Inc., Interline Connection, Inc.

Synopsis: The proposed amendment to the basic agreement expands the geographic scope to include Guyana and Suriname.

Agreement No.: 217–011355.

Title: Space Charter Agreement between Concorde Line and King Ocean Central America S.A.

Parties: Concorde Line, King Ocean Central America S.A.

Synopsis: The proposed Agreement would permit the parties to charter space aboard one another's vessels in the trade between United States Atlantic and Gulf ports, and inland points via such ports, and ports in Honduras, Guatemala, Nicaragua, and El Salvador.

Dated: October 25, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–26200 Filed 10–30–91; 8:45 am]

BILLING CODE 6730–01–M

[Agreement No. 202–011353]

Caribbean and Central America Credit Agreement; Erratum

Notice of the filing of Agreement No. 202–011353 was published on October 23, 1991 (56 FR 54863). The original filing should have indicated that the Agreement was also filed for approval under the provisions of the Shipping Act, 1916, and that the filing agent is: Nathan G. Bayer, Esquire, Freehill, Hogan & Maher, 80 Pine Street, New York, NY 10005.

To accommodate the requirements of the 1916 Act, the Commission is extending the time during which interested parties may submit comments concerning this Agreement for a period of ten days following publication of this notice.

Dated: October 25, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–26201 Filed 10–30–91; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84F–0345]

Poly(2-Vinylpyridine-Co-Styrene); Availability of Environmental Assessment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an environmental assessment prepared by Eastman Kodak Co., Eastman Chemical Division, in support of food additive petition (FAP) 2197 for the use of poly(2-vinylpyridine-co-styrene) as a coating agent in the preparation of rumen-stable, abomasum-dispersible nutrient products for ruminants. The agency is soliciting comments on the environmental assessment.

DATES: Written comments by December 2, 1991.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8731.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice was given on October 26, 1984 (49 FR 43111) that FAP 2197 was filed by Eastman Kodak Co., Eastman Chemical Division, P.O. Box 511, Kingsport, TN 37662 proposing that the food additive regulations in 21 CFR part 573 be amended to provide for the safe use of poly (2-vinylpyridine-co-styrene) as a coating agent in the preparation of rumen-stable, abomasum-dispersible nutrient products for ruminants.

When the petition was filed, the environmental assessment was not placed on display. For this reason, FDA is now making the environmental assessment available for public examination at the Dockets Management Branch (address above). Comments by the public are invited. Those comments received by December 2, 1991, will be considered. If the agency finds that an environmental impact statement is not required and the petition results in the promulgation of a regulation, a notice of availability of the agency's finding of no significant impact and of the evidence supporting that finding will be published with the final rule in the **Federal Register** in accordance with 21 CFR 25.40(c). If the agency finds that a significant environmental impact may occur, an environmental impact statement will be prepared as prescribed in 40 CFR parts 1500 through 1508.

Interested persons may on or before December 2, 1991, submit to the Dockets Management Branch (address above) written comments regarding the environmental assessment. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments and other information on this topic have been placed on file and may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 24, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91–26319 Filed 10–30–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91M–0394]

Alcon Laboratories, Inc.; Premarket Approval of Provisc™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Alcon Laboratories, Inc., Fort Worth, TX, for

premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of Provisc™. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 26, 1991, of the approval of the application.

DATES: Petitions for administrative review by December 2, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Denis McCarthy, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1209.

SUPPLEMENTARY INFORMATION: On August 23, 1989, Alcon Laboratories, Inc. 6201 South Freeway, Fort Worth, TX 76134–2099, submitted to CDRH an application for premarket approval of Provisc™. The device is a viscoelastic material indicated for use as a surgical aid in anterior segment procedures including cataract extraction and intraocular lens implantation.

On April 19, 1990, the ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 26, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 2, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 23, 1991.

Elizabeth D. Jacobson,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. 91–26237 Filed 10–30–91; 8:45 am]

BILLING CODE 4160–01–M

Food and Drug Administration

Preapproval Inspection Program; Notice of a Commissioner's Industry Exchange Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a Commissioner's industry exchange meeting on the preapproval inspection program for new drug applications (NDA's) and abbreviated new drug applications (ANDA's). This meeting is intended to provide an exchange of information between FDA-regulated drug industry and FDA that will be helpful in formulating plans for future management of new drug reviews. Other meetings will be announced in a future issue of the **Federal Register.**

DATES: The meeting will be held Wednesday, November 13, 1991, 8:30 a.m. to 4:30 p.m. Registration will be held before the meeting.

ADDRESSES: The meeting will be held at the San Francisco Airport Hyatt Regency Hotel, 1333 Bayshore Highway, Burlingame, CA.

FOR FURTHER INFORMATION CONTACT: Jeanne White, Office of Small Business, Scientific, and Trade Affairs (HF–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6776.

SUPPLEMENTARY INFORMATION: Recently, the Commissioner of Food and Drugs announced that he had formed a team to develop a model program to strengthen and streamline the review of new drugs in the field and at headquarters. As part of this model program, FDA has organized these meetings to discuss the agency's preapproval inspection program for NDA's and ANDA's, and to provide feedback to the Commissioner on issues of concern to the industry on these enforcement intitiatives. The meetings were organized by FDA's Office of Small Business, Scientific, and Trade Affairs, Center for Drug Evaluation and Research, and Office of Regulatory Affairs. This notice announces the November 13, 1991, meeting.

At the meetings, FDA managers and technical officials will be present to answer questions and listen to concerns about preapproval inspections, scale-up, validation, and reviews of NDA's and ANDA's and their supplements, and to discuss the new intitiatives for the review of applications. The agency believes that this exchange of information will be helpful to FDA-regulated drug industry and to the agency in formulating plans for future management of new drug reviews at the drug manufacturing facility and at FDA.

Dated: October 28, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91–26320 Filed 10–30–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91M–0367]

ELA Medical, Inc.; Premarket Approval of the Chorus DDD Pacemaker Models 6001, 6003, and 6033, CPR1 Microcomputer Programmer and P2A Handheld Programmer

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by ELA Medical, Inc., Minnetonka, MN, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Chorus DDD Pacemaker Models 6001, 6003, and 6033, CPR1 Microcomputer Programmer and P2A Handheld Programmer. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 6, 1991, of the approval of the application.

DATES: Petitions for administrative review by December 2, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Doris Terry, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1200.

SUPPLEMENTARY INFORMATION: On September 7, 1990, ELA Medical, Inc., 15245 Minnetonka Blvd., Minnetonka, MN 55345, submitted to CDRH an application for premarket approval of the Chorus DDD Pacemaker Models 6001, 6003, and 6033, CPR1 Microcomputer Programmer and P2A Handheld programmer. The three Chorus DDD Pacemakers are pulse generators and are indicated for patients who require permanent atrial or ventricular pacing. Generally accepted indications for long-term cardiac pacing include, but are not limited to: Sick-sinus syndrome; chronic symptomatic drug-resistant sinus arrhythmias, such as sinus bradycardia, sinus arrest, sinoatrial (SA) block as seen in sick-sinus syndrome; chronic, symptomatic second-degree or third-degree atrioventricular (AV) block; recurrent Adams-Stockes syndrome; symptomatic bilateral bundle branch block; and hypersensitive carotid sinus syndrome (carotid sinus syncope). Also symptomatic drug-resistant bradyarrhythmias that impair cardiac output are considered indications for pacing in patients with acute myocardial infarction. Dual chamber pacing is specifically indicated in patients requiring permanent pacemakers where restoration of atrioventricular synchrony and/or sinus modulated rate variability is indicated: To improve cardiac output or congestive heart failure related to bradycardia or VVI pacing intolerance (pacemaker syndrome); to protect against certain tachyarrhythmias by suppressing ectopic foci in both the atrium and the ventricle; to treat varying degrees of AV block with normal sinus activity; to treat patients with sick-sinus syndrome (conditions such as intermittent sinus bradycardia, sinus arrest, SA block, and bradytachy syndrome); and to use against certain drug-resistant and reentrant tachycardias by varying AV delay settings.

In accordance with the provisions of section 515(b)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Circulatory System Devices Panel, an FDA advisory committee, for review and recommendation because the information and issues in the PMA substantially duplicate information previously reviewed by this panel. FDA is well aware of: (1) The level of safety and effectiveness that the Panel had considered adequate for an approval recommendation for a DDD pacemaker; (2) the quality and quantity of data and analysis to support such a recommendation; and (3) the labeling language and claims that are acceptable for such a device. Therefore, FDA believes that Panel review of this PMA was not necessary to make a determination of its safety and effectiveness. On September 6, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 2, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 23, 1991.

Elizabeth D. Jacobson,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. 91–26236 Filed 10–30–91; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 53, No. 50, pg. 8510, dated, Tuesday, March 15, 1988) is amended to reflect a change within the Health Standards and Quality Bureau. The specific change will realign the Office of Program Assessment and Information into a Division of Program Assessment and Information under the Office of Peer Review. Concurrently, the Division of Program Coordination and Information and the Division of Quality of Care Assessment would become branches in that Division entitled the Quality of Care Assessment Branch and the Program Coordination and Information Branch.

The specific amendments to part F. are described below:

• Section FP.20.C.3., Office of Peer Review (FPE3), has been revised to include the addition of the Division of Program Assessment and Information and to reflect an update to the functional statement for that office. The new functional statement should read as follows:

3. Office of Peer Review (FPE3)

• Coordinates implementation of peer review and other medical review organizations.

• Develops and interprets policies related to the conduct of peer review at various levels of care.

• Develops and implements operational procedures and instructions relating to fiscal management of peer review programs, including the principles of payment for review, development of program related budgets, accounting procedures, reports management, statistical reporting, geographic variations of medical treatments, and auditing requirements applicable to such peer review organizations.

• Develops, implements, and maintains data systems in support of the Office of Peer Review data requirements for the management of the peer review program and contracts.

• Establishes guidelines relating to the oversight of peer review and other medical review organizations.

• Evaluates and provides advice and assistance to regional offices in overseeing fiscal and program management activities.

• Directs and oversees the End-Stage Renal Disease program and the Uniform Clinical Data Set function.

• Section FP.20.C3.d. The new citation will be:

d. Division of Program Assessment and Information (FPE34)

• Oversees a variety of research techniques to review the quality of care activities in health care settings.

• Directs the development of strategies for improving the assessment of quality of health care through research and analytical techniques.

• Directs and monitors the research, assessment, and dissemination of information on the quality of care.

• Develops data and information dissemination protocols to provide feedback to the public and the professional medical community on the quality of care provided to Medicare beneficiaries.

• Maintains liaison with other HCFA components, the Department of Health and Human Services, Congress, and external professional and medical organizations.

• Section FP.20.C.4., Office of Program Assessment and Information (FPE6), is deleted in its entirety.

Dated: October 20, 1991.

Gail R.Wilensky,

Administrator.

[FR Doc. 91-26218 Filed 10-30-91; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-91-963]

Office of the Regional Administrator—Regional Housing Commissioner; Acting Manager, Region IV (Atlanta); Designation for Orlando Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Orlando Office.

EFFECTIVE DATE: September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Charles A. Lipthrott, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303-3388, 404-841-5199.

Designation of Acting Manager for Orlando Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager
2. Chief, Valuation Branch
3. Chief, Property Disposition Branch
4. Chief, Mortgage Credit Branch
5. Chief, Loan Management Branch

This designation supersedes the designation effective November 9, 1989, (55 FR 12291, April 2, 1990). (Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971)).

This designation shall be effective as of September 9, 1991.

M. Jeanette Porter,

Manager, Orlando Office.

Raymond A. Harris,

Regional Administrator, Regional Housing Commissioner.

[FR Doc. 91-26213 Filed 10-30-91; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-92-4410-08]

Availability of the Final Environmental Impact Statement for the Proposed Nebraska Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the final Environmental Impact Statement for the proposed Nebraska Resource Management Plan (RMP).

SUMMARY: The Bureau of Land Management (BLM) has completed the Nebraska proposed Resource Management Plan/final Environmental Impact Statement (RMP/EIS) and copies are available to the public. When approved, the Nebraska RMP will guide management of the public lands in the State of Nebraska. The Nebraska proposed RMP proposes land and resource uses, and identifies management goals, constraints, and general management practices needed to administer the public lands in Nebraska. The term "public lands" means the Federally-owned land surface and Federally-owned minerals administered by the BLM.

DATES: Written comments will be accepted for 30 days following the date the Environmental Protection Agency (EPA) publishes the proposed RMP/final EIS in the **Federal Register.**

ADDRESSES: Copies of the Nebraska proposed RMP/final EIS can be obtained from the BLM Newcastle Resource Area Office at 1101 Washington Blvd., Newcastle, Wyoming 82701. Comments should be sent to the Newcastle Area Manager at the Newcastle Resource Area Office.

FOR FURTHER INFORMATION CONTACT: Floyd Ewing, Newcastle Area manager, or Gary Lebsack, RMP Team Leader, at the above address or telephone (307) 746-4453.

SUPPLEMENTARY INFORMATION: The BLM Newcastle Resource Area has the responsibility of managing all BLM administered public lands in Nebraska.

The BLM administered public land surface (about 6,700 acres) consists of 168 small and isolated parcels scattered over 30 of the 93 counties in Nebraska. The parcels range in size from 0.3 acres to 240 acres. The majority of this public land surface is located in the western part of the State. Some of the BLM administered Federal mineral estate lies beneath the BLM administered public lands. However, most of the Federal minerals lie beneath land surface in private ownership or owned by the State of Nebraska (about 240,000 acres) or Federally-owned land surface that is managed by other Federal agencies.

The planning effort does not address the Federal mineral estate under those lands administered by other Federal agencies (about 260,000 acres) or those withdrawn for purposes of other agencies (about 81,000 acres). Management of the Federal mineral estate in these areas is guided by the plans and policies of the other surface management agencies.

Before the Nebraska RMP is approved, the proposed RMP is subject to a 30-day protest period and resolution of any protests that may be filed. The protest period begins with the date the EPA publishes their notice of availability of the Nebraska proposed RMP/final EIS in the **Federal Register.**

All parts of the proposed RMP may be protested. The procedures for protesting are delineated in 43 CFR 1610.5–2. Essentially, the procedures provide that a protest may be made by any person who participated in the planning process, who raised the issue of protest during the planning process, and who has an interest that may be affected by the approval of the proposed RMP. Protests must be filed in writing with the Director of the BLM within 30 days after publication of a notice in the **Federal Register** that the EPA has received the proposed RMP/final EIS.

Written protests must include: (a) the name, mailing address, telephone number, and interest of the person protesting; (b) a statement of the issues and the parts of the proposed RMP being protested; (c) copies of all documents pertaining to the protest that the protestor submitted during the planning process or an indication of the date the issue or issues were discussed for the record; and, (d) a statement explaining why the protestor believes the proposed decision is wrong.

Dated: October 24, 1991

F. William Eikenberry,

Associate State Director.

[FR Doc. 91–26244 Filed 10–30–91; 8:45 am]

BILLING CODE 4310–22–M

[NV–060–02–4320–02]

Meeting and Agenda for the Battle Mountain District Grazing Advisory Board

AGENCY: Bureau of Land Management.

ACTION: Meeting and agenda for the Battle Mountain District Grazing Advisory Board.

SUMMARY: In accordance with Public Law 94–579 and Section 3, Executive Order 12548 of February 14, 1986, notice is hereby given that the Battle Mountain District Grazing Advisory Board will meet on December 4, 1991. The meeting will convene at 9 a.m. at the Tonopah Convention Center, 301 Brougher Street, Tonopah, Nevada.

Agenda items for the meeting will include: (1) Livestock Grazing in riparian areas; (2) BLM's new initiative for Wild House Management; (3) Range Improvement Projects; (4) Allotment Evaluations/Decisions scheduled for FY 1992.

The meeting is open to the public. Interested persons may make oral statements to the board between 11:30 and 12 noon, on December 4, 1991, or file written statements for the board's consideration. If you wish to make oral comments, please contact James D. Currivan at the address and phone number below by December 2, 1991.

DATES: December 4, 1991.

ADDRESSES: Bureau of Land Management, Battle Mountain District office, P.O. Box 1420, Battle Mountain, Nevada 89820.

FOR FURTHER INFORMATION CONTACT: James D. Currivan, District Management, (702) 635–4000.

Dated: October 16, 1991.

Michael Mitchel,

Acting District Manager, Battle Mountain, Nevada.

[FR Doc. 91–26245 Filed 10–30–91; 8:45 am]

BILLING CODE 4310–HC–M

[ID–943–02–4212–12; IDI–26444, IDI–26769]

Notice of Exchange and Order Providing for Opening of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Exchanges and Opening Order.

SUMMARY: The United States has issued two exchange conveyance documents as shown below under section 206 of the Federal Land Policy and Management Act. In addition to providing official public notice of the exchanges, this document contains an order which opens lands received by the United States to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: December 2, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384–3163.

1. In two exchanges made under the provisions of Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States:

Boise Meridian

IDI–26444 (Conveyed to the State of Idaho)

T. 1 N., R. 33 E.,
secs. 5 and 6.
T. 2 N., R. 33 E.,
sec. 3;
sec. 4, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, and SE¼;
sec. 8, S½S½;
secs. 17 to 20, inclusive;
secs. 29 to 32, inclusive.

IDI–26769 (Conveyed to Lola L. Coates)

T. 8 N., R. 22 E.,
sec. 6, lot 3.

Comprising 7,589.55 acres of public land.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

(Acquired from the State of Idaho)

T. 1 N., R. 29 E.,
sec. 36.
T. 1 N., R. 30 E.,
sec. 16.
T. 5 N., R. 26 E.,
sec. 36.
T. 9 N., R. 25 E.,
sec. 16.
T. 1 S., R. 30 E.,
secs. 16 and 36.
T. 3 S., R. 28 E.,
sec. 16, W½.
T. 3 S., R. 30 E.,
sec. 16.

(Acquired from Lola L. Coates)

T. 9 N., R. 22 E.,
sec. 31, S½SE¼, by metes and bounds,
Beginning at the NE corner of the SE¼SE¼, sec. 31, said point being North 1,287.98 ft. and West 7.98 ft. from the SE corner of said sec. 31;
S. 89°15'18" W., 2,680.45 ft. along the North line of the S½SE¼ of said sec. 31 to the NW corner of the SW¼SE¼ of said sec. 31;
S. 0°05'55" E., 898.08 ft. along the West line of the SE¼ of said sec. 31 to the point of intersection with the Northerly right-of-way of Trail Creek Road;
N. 74°26'45" E., 2,781.71 ft. along said right-of-way line to the point of intersection with the East line of the SE¼ of said sec. 31;
N. 0°21'18" W., 187.01 ft. along said East line to the NE corner of the SE¼SE¼, sec. 31, the point of beginning.

Comprising 4,844.252 acres of State and private land.

The purpose of the exchanges was to acquire non-federal lands which have high public values for prime riparian and wildlife habitat. The public interest was well served through completion of the exchanges. The values of the Federal and State lands in both exchanges were equal.

3. At 9 a.m. on December 2, 1991, the reconveyed State and private lands described in paragraph 2 will be opened to the operation of the public lands laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 2, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on December 2, 1991, the reconveyed State and private lands described in paragraph 2 will be opened to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: October 23, 1991.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 91-26246 Filed 10-30-91; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-020-00-4212-12; AZA-25242]

Exchange of Public Lands, Mohave County, AZ

AGENCY: Bureau of Land Management—Interior.

ACTION: Correction of **Federal Register** publication.

On September 27, 1991, a Notice of Realty Action was published in the **Federal Register** Volume 56, No. 188, Page 49196, describing public lands which are available for disposal by exchange. The legal description for one of these parcels was in error and is hereby corrected to read as follows:

Gila and Salt River Meridian

AZA-25242

T. 27N., R. 20W.,
Sec. 30, NE¼, E½NW¼, Lots 1-4, E½SW¼, SE¼.

Dated: October 23, 1991.

Henri R. Bisson,

District Manager, Phoenix District.

[FR Doc. 91-26261 Filed 10-30-91; 8:45 am]

BILLING CODE 4310-32-M

[ID-050-4212-13; IDI-28601]

Notice of Realty Action; Exchange of Public Land, Idaho

AGENCY: Bureau of Land Management [BLM], Interior.

ACTION: Notice of Realty Action, exchange of public land in Jerome County, Idaho for private land within Blaine County, Idaho.

SUMMARY: The purpose of the exchange is to acquire the non-federal grazing land to improve the manageability of the public lands for livestock and wildlife habitat. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with Blaine County and Jerome County Commissioners and Idaho Department of Fish and Game. The public interest will be well served by making the exchange.

The following described public land has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management action of 1976, as amended, 43 U.S.C. 1716.

T. 9 S., R. 17 E., Boise Meridian, Jerome County, Idaho
Section 15: S½N½, E½NE¼SW¼, SE¼;
Section 22: E½E½NE¼, E½W½E½NE¼, E½W½W½SE¼NE¼, NE¼SE¼, S½SE¼;

containing 525.00 acres

In exchange for this land, the Federal Government will acquire non-federal lands from Idaho State Bank, described below:

T. 2 N., R. 19 E., Boise Meridian, Blaine County, Idaho
Section 4: N½SW¼, NW¼SE¼, S½SE¼;
Section 5: SE¼;
Section 7: S½SE¼;
Section 8: W½NE¼, S½SW¼, SE¼;
Section 9: NE¼NE¼, W½NE¼, W½, NW¼SE¼;
Section 16: N½NE¼, NW¼, W½SW¼;
Section 17: W½E½, NW¼, N½SW¼, SE¼SW¼;
Section 18: E½E½, NW¼NE¼, SE¼SW¼, SW¼SE¼;
Section 19: Lots 5, 6, 7 (M&B TL 3883, 3884, 3886, 3887, 3889, 3891, 3892); ALIQ NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Section 20: SW¼NW¼, NW¼SW¼;
Section 30: Lots 3, 4 (M&B TLS 3668, 3270, 3871, 3873, 3875, 3876, 3878, 3880, 3881); ALIQ NW¼NE¼, E½NW¼, NE¼SW¼;

containing 2,839.41 acres

The value of the land to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the land.

There will be a reservation for geothermal and oil and gas to the Federal Government on the public land with no other mineral reservations on either the offered private land or selected public land.

The patent, when issued, will contain the following reservations and conditions to the United States:

1. A right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All geothermal and oil and gas shall be reserved to the United States, as required by section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

3. All valid existing rights and reservations of record on the date of patenting.

The publication of this notice in the **Federal Register** will segregate the public land described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

ADDRESSES: Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at the Shoshone District Office, P.O. Box 2-B, 400 West F Street, Shoshone, Idaho, or by calling Mical Walker at (208) 886-2206.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this Notice, interested parties may submit comments to the Shoshone District Manager regarding the proposed action, any adverse comments will be evaluated by the District, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: October 21, 1991.

Mary C. Gaylord,

District Manager.

[FR Doc. 91-26247 Filed 10-30-91; 8:45 am]

BILLING CODE 4310-GG-M

[OR-120-02-4212-13; 62-029; OR-45444]

Exchange of Public Land, Coos County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action-Land Exchange.

SUMMARY: The following described public domain lands, including mineral rights, located on the North Spit of Coos Bay, Oregon, are being considered for transfer out of Federal ownership by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716):

Willamette Meridian, Oregon

T. 25 S., R. 13 W.,
Sec. 7: Lots 5, 6, 8, SE¼,SE¼SW¼, S½,SE¼SE¼NE¼;
Sec. 18: Lot 7, E½,E½NW¼.
Comprising 140.91 acres, more or less.

Final determination on disposal will await completion and review of the environmental assessment. The patent, if issued, will be subject to a reservation of a right-of-way theron for ditches and canals constructed by the authority of the United States of America, Act of August, 1890 (43 U.S.C. 945) and a reservation thereon for a road for public access to be constructed by the authority of the United States of America Act of October 21, 1976 (43 U.S.C. 1761). The patent will also be issued subject to the following existing rights-of-way grants and reservations:

1. OR 36509-U.S. Corps of Engineers
2. OR 38912-Federal Aviation Administration
3. OR 44459-Pacific Power & Light
4. OR 44460-Coos Bay North Bend Waterboard
5. OR 47060-Weyerhaeuser Company granted pursuant to the Act of October 21, 1976.

In exchange for all or a portion of these lands, the United States of America could acquire all or a portion of the following described lands from the exchange proponent:

Willamette Meridian, Oregon

T. 25 S., R. 13 W.,
Sec. 18: Lot 4, NE¼SW¼ and accreted lands adjacent to and abutting Lot 4;
Sec. 19: accreted lands adjacent to and abutting Lot 4.
T. 25 S, R. 14 W.,
Sec. 25: Lot 1 and adjoining tidelands.
Comprising 157.4 acres, more or less.

The value of the lands to be exchanged have been established by fair market value appraisals and are approximately equal, the acreage may be adjusted or a cash payment may be made to the United States of America to equalize values at the time of consummation of the exchange transaction.

The exchange proponent, the Oregon International Port of Coos Bay, has submitted a written proposal concerning the lands noted above indicating that the purpose of this exchange is to fulfill a public need which requires the Federal lands to accommodate the development and marketing of a Marine Industrial Park. The private lands being considered for acquisition by the United States of America would add important scenic quality, recreational opportunities and wildlife habitat values to adjoining Federal lands.

This exchange proposal is consistent with the management objectives of the Coos Bay Management Framework Plan (MFP) and the Federal lands have been identified for disposal in the MFP. This exchange proposal has been discussed with Coos County and various State of Oregon agencies who have indicated that the proposal is consistent with local government plans.

The public interest will be well served by making this exchange.

The publication of this notice in the Federal Register segregates the Federal lands described herein from all forms of appropriation and entry under the public land laws, including the mining laws, for a period of two years from the date of publication. The exchange is expected to be completed before the end of that period.

ADDRESS: Detailed information concerning the exchange, including the draft environmental analysis, is available for review at the Bureau of Land Management's Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon 97459.

DATE: On or before December 16, 1991, interested parties may submit comments to the Coos Bay District Manager at the above address (Please reference exchange number OR 45444). Objections will be evaluated by the Oregon State Director of the Bureau of Land Management who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the department of the Interior.

FOR FURTHER INFORMATION CONTACT: Thom Green, Coos Bay District Office, (503) 756-0100.

Dated: October 21, 1991.

Melvin E. Chase,

District Manager.

[FR Doc. 91-26248 Filed 10-30-91; 8:45 am]

BILLING CODE 4310-33-M

[AZ-942-02-4730-12]

Arizona; Notice of Filing of Plats of Survey

October 23, 1991.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing a survey of an informative traverse in section 15, the dependent resurvey of the fixed and limiting boundary of the left bank of the Colorado River and the 1905 adjusted meanders in section 10, and a survey of the partition line between sections 10 and 15 in Township 17 North, Range 22 West, Gila and Salt River Meridian, Arizona, was accepted June 28, 1991, and was officially filed July 3, 1991.

This plat was prepared at the request of the United States Department of the Interior, Office of Hearings and Appeals.

A plat representing a dependent resurvey of portions of the north boundary and subdivisional lines, and an informative traverse of the southerly right-of-way of Vock Canyon Road in section 3, Township 23 North, Range 17 West, Gila and Salt River Meridian, Arizona, was accepted July 5, 1991, and was officially filed July 9, 1991.

A plat representing a dependent resurvey of a portion of the subdivisional lines in Township 20 North, Range 15 West, Gila and Salt River Meridian, Arizona, was accepted August 13, 1991, and was officially filed August 22, 1991.

These plats were prepared at the request of the Bureau of Land Management, Kingman Resource Area Office.

A plat representing a dependent resurvey of a portion of the subdivisional lines, and the adjusted 1962 meanders of the left bank of the Colorado River in section 28, Township 11 North, Range 18 West, Gila and Salt River Meridian, Arizona, was accepted July 10, 1991, and was officially filed July 16, 1991.

A plat representing a dependent resurvey of a portion of the subdivisional lines, and a survey of the subdivision in section 14, Township 11 North, Range 18 West, Gila and Salt River Meridian, Arizona, was accepted August 13, 1991, and was officially filed August 22, 1991.

These plats were prepared at the request of the Bureau of Land Management, Yuma District Office.

A plat (in 5 sheets) representing a corrective dependent resurvey and dependent resurvey of portions of the south and west boundaries of the San Carlos Indian Reservation and the First Standard Parallel South on the south boundary of Township 5 South, Range 16 East and the east boundary and subdivisional lines of Township 6 South, Range 16 East, Gila and Salt River Meridian, Arizona, was accepted July 15, 1991, and was officially filed July 30, 1991.

A plat (in 3 sheets) representing a dependent resurvey of portions of the south boundary of the San Carlos Indian Reservation, and the First Standard Parallel South, on the south boundary of Township 5 South, Range 17 East, and the east and west boundaries and subdivisional lines of Township 6 South, Range 17 East, Gila and Salt River Meridian, Arizona, was accepted July 15, 1991, and was officially filed July 30, 1991.

A plat representing a dependent resurvey of portions of the south boundary of the San Carlos Indian Reservation, and the south (First Standard Parallel South) and west boundaries and subdivisional lines in Township 5 South, Range 18 East, Gila and Salt River Meridian, Arizona, was accepted July 15, 1991, and was officially filed July 30, 1991.

A supplemental plat showing the relotting of original lots 3 and 4, in section 6, Township 6 South, Range 18 East, Gila and Salt River Meridian, Arizona, was accepted July 15, 1991, and was officially filed July 30, 1991.

These plats were prepared at the request of the Bureau of Land Management, Safford District Office.

A plat (in 4 sheets) representing a dependent resurvey of portions of the north boundary, subdivisional lines, and portions of certain mineral surveys, and the subdivision of section 3 and a metes-and-bounds survey in Township 23 North, Range 18 West, Gila and Salt River Meridian, Arizona, was accepted July 22, 1991, and was officially filed July 30, 1991.

This plat was prepared at the request of the Bureau of Land Management, Phoenix District Office.

A plat representing a survey of the east, west, and north boundaries, the subdivisional lines and the subdivision of section 13, in Township 27 North, Range 30 East, Gila and Salt River Meridian, Arizona, was accepted July 30, 1991, and was officially filed August 8, 1991.

A plat representing a dependent resurvey of a portion of the Arizona-New Mexico State Line between the 84 mile post and Astronomical Station No. 3 and Tract 37, the survey of the north boundary, subdivisional lines, certain partition lines in section 17, and a portion of the median line of Black Creek in section 17, and informative traverses of portions of the right and left banks of Black Creek in section 17, in Township 27 North, Range 31 East, Gila and Salt River Meridian, Arizona, was accepted July 30, 1991, and was officially filed August 8, 1991.

These plats were prepared at the request of the Bureau of Indian Affairs, Navajo Area Office, Window Rock, Arizona.

A plat representing a dependent resurvey of line 3–4 of Homestead Entry Survey No. 447, and the metes-and-bounds survey of certain tracts in unsurveyed Township 3 North, Range 13 East, Gila and Salt River Meridian, Arizona, was accepted September 3, 1991, and was officially filed September 11, 1991.

This plat was prepared at the request of the Bureau of Reclamation, Arizona Projects Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 91-26249 Filed 10-30-91; 8:45 am]

BILLING CODE 4310-32-M

[ID-942-02-4730-12]

Idaho: Filing of Plats of Survey

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., October 24, 1991.

The plat representing the dependent resurvey of portions of the boundary line between Idaho and Washington (west boundary), the First Guide Meridian West (east boundary) and subdivisional lines, and the subdivision of sections 1 and 13, T. 44 N., R. 6 W., Boise Meridian, Idaho, Group No. 759, was accepted October 21, 1991.

The plat representing the corrective dependent resurvey of portions of the boundary line between Idaho and Washington (west boundary), the south boundary, subdivisional lines, and subdivision of section 36, T. 45 N., R. 6 W., Boise Meridian, Idaho, Group No. 808, was accepted October 21, 1991.

These surveys was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: October 24, 1991.

Gary T. Oviatt,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 91-26250 Filed 10-30-91; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Release of Draft Amendment to the Long-Range Plan for the Klamath River Basin Conservation Area Fishery Restoration Program for Public Review

AGENCY: Department of the Interior.

ACTION: Notice of release of draft amendment for review.

SUMMARY: The Klamath River Basin Fisheries Task Force proposes to amend the Long-Range Plan (the Plan) for the Kalmath River Basin Conservation Area Fishery Restoration Program to include restoration planning and implementation in the upper Klamath River basin. The upper Klamath River basin is referred to in the Plan as the areas upstream of Iron Gate Reservoir including, but not limited to, watersheds of the Williamson, Sprague, and Sycan Rivers, and including upper and lower Klamath Lakes. This notice serves to announce the availability of the draft amendment to the Plan for public review and comment. Both the Plan and the draft amendment are available for information. Only comments addressing the amendment will be considered. The Plan and the draft amendment will be distributed to agencies, tribes, libraries, and interested groups. Additional persons wishing to review this document may do so at the locations indicated below under **ADDRESSES.**

DATES: The draft Plan amendment is expected to be available for comment by November 1, 1991. Comments will be accepted through December 15, 1991. Written comments may be sent to the address indicated below under **FOR**

FURTHER INFORMATION CONTACT.

ADDRESSES: Copies of the Plan and amendment will be available for review at the following locations during normal business hours: *Libraries:* Siskiyou County Public Library, 719 4th Street, Yreka, CA; Siskiyou County Branch Libraries located in McDoel and Dorris, CA; Humboldt County Public Library, 421 "I" Street, Eureka, CA; Del Norte County Public Library, 190 Price Mall, Crescent City, CA; Trinity County Public Library, 229 Main, Weaverville, CA; and Klamath County Library, 126 S. 3rd, Klamath Falls, OR. *Federal Offices:* U.S. Fish and Wildlife Service, Klamath River Fishery Resource Office, 1215 South Main, Suite 212, Yreka, CA; Klamath National Wildlife Refuge, Tulelake, CA; U.S. Fish and Wildlife Service, Regional Office, 911 N.E. 11th Avenue, Portland, OR; U.S. Forest Service, Klamath National Forest, 1312 Fairlane Rd, Yreka, CA; Goosenest Ranger District, McDoel, CA; U.S. Forest Service, Winema National Forest; 2819 Dahlia St., Klamath Falls, OR; Chemult Ranger District, Chemult, OR; Chiloquin Ranger District, Chiloquin, OR; U.S. Forest Service, Fremont National Forest, 524 N. G St., Lakeview, OR; Bly Ranger District, Bly, OR; Paisley Ranger District, Paisley, OR; Lakeview Ranger District, Lakeview, OR; Silver Lake Ranger District, Silver Lake, OR; U.S. Bureau of Reclamation, Klamath Project, 6600 Washburn Way, Klamath Falls, OR; U.S. Geological Survey, 10615 S.E. Cherry Blossom Drive, Portland, OR; and U.S. Soil Conservation Service, 2455 Patterson, Klamath Falls, OR. *Other Government Offices:* California Department of Fish and Game, 601 Locust Street, Redding, CA; Klamath Tribal Office, Old Williamson Business Park, Hwy 97, Chiloquin, OR; Oregon Department of Fish and Wildlife, 6134 Parell Road, Bend, OR; Oregon Department of Environmental Quality, 2146 N.E. 4th St., Bend, OR; California North Coast Regional Water Quality Control Board, 1440 Guerneville Road, Santa Rosa, CA; and Klamath Compact Commission, 280 Main St., Klamath Falls, OR.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, U.S. Fish and Wildlife Service, Klamath Field Office, P.O. Box 1006 (1215 South Main, suite 212), Yreka, CA, 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For further information on the Klamath River Basin Conservation Area Restoration Program, see 16 U.S.C. 460ss-ss6 (the "Klamath Act").

Dated: October 18, 1991.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–26188 Filed 10–30–91; 8:45 am]

BILLING CODE 4310–55–M

Klamath Fishery Management Council; Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 1 p.m. to 5 p.m. on Sunday, November 10; and from 8 a.m. to 12 noon on Monday, November 11, 1991.

PLACE: The meeting will be held at the Clarion Hotel, 401 East Millbrae Avenue, Millbrae, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main, suite 212), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The Klamath Fishery Management Council will hear technical reports on 1991 salmon fisheries, incidental catch of salmon in trawl fisheries, and 1991 flow conditions in the Trinity and Klamath Rivers. The Council will discuss the long term plan for management of harvest of Klamath stocks, and a possible successor to the Five-Year Agreement for allocation of fall chinook harvest, which expired with the 1991 fishing season. Public comment will be taken between 4:30 and 5 p.m. on Sunday, November 10.

Dated: October 18, 1991.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–26190 Filed 10–30–91; 8:45 am]

BILLING CODE 4310–55–M

Klamath River Basin Fisheries Task Force; Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 10 a.m. to 5 p.m. on Wednesday, November 6; and from 8 a.m. to 3 p.m. on Thursday, November 7, 1991.

PLACE: The meeting will be held at the Best Western Brookings Inn Conference Center, 1143 Chetco Ave, Brookings, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main, suite 212), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). On November 6–7, 1991, the Task Force will meet to discuss a procedure for action planning—the planning and scheduling of specific tasks, in accordance with the policies of the long range fishery restoration plan. Reports will be presented on spring chinook protection, tribal water rights, National Forest management planning, review of hatchery programs, identification of Klamath fish stocks, a conference on decomposed granite sedimentation, and other topics. The public may comment between 3 p.m. and 3:30 p.m. on November 6.

Dated: October 18, 1991.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–26189 Filed 10–30–91; 8:45 am]

BILLING CODE 4310–55–M

Record of Decision and Statement of Findings on the Northern Montezuma Wetlands Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the New York State Environmental Quality Review Act (SEQRA), the National Environmental Policy Act (NEPA), and the implementing regulations, the New

York State Department of Environmental Conservation (the "Department") and the United States Fish and Wildlife Service (the "Service") jointly issue this Record of Decision and Statement of Findings upon consideration of the Final Environmental Impact Statement (FEIS) that has been filed on the Northern Montezuma Wetlands Project.

The Department and the Service have evaluated and considered the alternatives for the long-range conservation and management of the Northern Montezuma Wetland complex as presented in the FEIS and have reviewed and considered public and agency comments. Based on that evaluation and review, the Department and the Service have selected the proposed Action Alternative (Alternative 2) as described in the FEIS for implementation. This determination was based on a thorough analysis of the environmental, social, economic and similar considerations.

Background

The Northern Montezuma Project was selected in 1986 as a candidate for joint acquisition and management to further the objectives of the Northern American Waterfowl Management Plan. This wetlands complex is considered New York State's premier freshwater wetland consisting of 13,740 acres of wetland habitats, and 4,435 acres of drained wetlands now in agricultural uses. This area is located in the Counties of Wayne, Cayuga and Seneca, New York, between the cities of Rochester and Syracuse. The area in which management action is contemplated, also include 16,875 acres of surrounding uplands in agricultural and other uses. These uplands provide a protective buffer zone around the wetlands, public and administrative access to the wetlands, critically needed nesting areas for wildlife, and a strong agricultural component in the complex. The total size of the complex is 36,050 acres, of which 11,900 acres are in the Service's area of interest and 24,150 acres in the Department's area of interest.

The Department's and Service's primary goals in this area are to provide long term protection and enhancement of wetlands habitats, protect endangered, threatened, and special concern wildlife habitats, restore and create additional wetland habitats, increase access for compatible public uses, maximize production of waterfowl and other wetland wildlife, protect rare and significant biotic communities, and strongly encourage private involvement in achievement of these goals.

Public participation in the development and review of this proposal has been extensive. Informal "open house" informational meetings were conducted and civic, environmental and social groups were given presentations about the project. Town board meetings were attended, formal scoping meetings and public hearings were held, several informational meetings were held after the draft EIS was made available and many telephone and written contacts were made with interested publics.

The Selected Alternative

The selected alternative is the Proposed Action as described in the FEIS. This alternative provides great flexibility and options to meet the objectives of the Service, the Department, landowners and local communities. The Service and the Department will work with interested project area landowners to manage their lands to produce wildlife benefits. Management agreements with private landowners will be sought to further the goals of the project. Lands available for sale will be purchased by negotiation by the Service and the Department as funds become available. Easements and other less than fee land interests will be sought where this method would serve the best interests of both parties. All these options will be exercised over a period of several decades.

Management activities will include creation, restoration and enhancement of wetlands, maintaining agricultural uses on both private and public lands, identification of nesting habitat and artificial nesting structures for wildlife, and construction and maintenance of access facilities.

The Department and the local community have identified the desirability of establishing a Department facility in the local project area. This facility would provide staff with a local presence to implement the activities of negotiation and management, and provide extension and educational services to the community. As funding permits, the Department will provide a modest-scale facility to serve the needs of project implementation and to serve the needs of existing Department staff who now work in this area.

Other Alternatives Considered

The FEIS described four reasonable alternatives in addition to the proposed action. The No Action proposal would involve the Department and the Service only to the extent of implementing existing management programs on currently available public land areas and implementing existing environmental laws and regulations. Increased land use changes would likely occur in the project area that potentially result in additional losses of wildlife habitats and wetland resource quantity and quality. Unpredicted land uses could occur that would detrimentally affect conservation of the area's existing natural resources.

Another alternative, Wetlands Protection with minimal Management Zone, would involve all the activities described in the Proposed Action but on a much reduced area of 11,200 acres. While affording better protection to the area's wetland resources than now exist, the potential for restoring, creating and enhancing wetland resources essentially would be precluded. Provision for an optimal protective upland buffer zone and the benefits it could provide would be seriously compromised by this alternative. This proposal would also significantly jeopardize achievement of the project's goals.

The Maximum Wetlands Protection and Management Zone alternative is similar in activity to the Proposed Action but is significantly larger in size and scope. This alternative involves a total of 50,979 acres. While this alternative would provide the greatest degree of resource protection and management flexibility, the associated economic and social impacts represent a major disadvantage.

The fifth proposal discussed in the FEIS is the Non-Governmental alternative. Were this alternative selected, private sector organizations would be encouraged to implement the activities specified in the Proposed Action without direct involvement by the Service or the Department. While private sector organizations will play a key role in the Northern Montezuma Wetlands project, their efforts alone are unlikely to achieve project goals. However, involvement of these organizations in concert with the efforts of the Service and the Department will increase the likelihood of success.

Minimization of Impacts and Public Concerns

Major public concerns that have been identified include the potential use of eminent domain to acquire properties, and the loss of tax base due to shortfalls in the Service's Revenue Sharing Program and the lack of legal authority for the Department to make payments to local governments in lieu of taxes. The need was voiced for a local Department presence (office) in the locale. The Purpose and Need for the project was

questioned. Concerns were expressed about the impact the project would have on the agricultural resource and thus the economic base of the area. Perceived hydrology impacts resulting from wetland management activities were identified as well

Minimizations of these impacts are addressed in the FEIS. A clear policy on the use of eminent domain is described. The Service and the Department will endeavor to equitably address federal and state statutes that deal with the taxation of public lands or the payment of monies in lieu of taxes. The Proposed action includes identification of need for a modest-scale office in the local area. The Purpose and Need for the project are clearly identified in the FEIS, as are mitigation techniques for the impact of the project on agricultural resources. Emphasis on extension and management agreement activities will also lessen rather than aggravate downstream flooding. Hydrologic impacts associated with management activities are addressed in the FEIS. In addition, organizations such as the Central New York-Finger Lakes Flood Control Advisory Committee will be involved before any physical changes are made.

Findings and Decision

Having reviewed and considered the FEIS for the Northern Montezuma Wetland Project and the public comments thereon, the Department and the Service find as follows:

1. The requirements of SEQRA and NEPA and their implementing regulations have been satisfied, and

2. Statutory authority for the Service and the Department to fund (implement) this project exists, and

3. The Proposed Action Alternative represents the best balance between the Department's and the Service's goals and objectives and the public's concerns identified throughout the public participation process, and

4. Consistent with social, economic, and other essential considerations from among the reasonable alternatives thereto, the Proposed Action alternative is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects disclosed in the FEIS, and

5. Consistent with the social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the FEIS process will be minimized or avoided by incorporating as conditions to this decision mitigative measures.

Having made the above findings, the Service and the Department have decided to proceed, as funding permits, with implementation of the Proposed Action alternative. Special consideration and priority will be placed on the area of the Crusoe Lake Basin. Development and management activities generally described in the FEIS will be implemented on lands acquired by the Service and/or the Department and on private lands where a management agreement of easement permits. The decision to implement this alternative is subject to the following conditions that will further minimize or avoid the environmental impacts and public concerns identified during the environmental review process:

A. The Department and the Service will prepare detailed management plans for implementation of wetland and upland management activities once sufficient quantities of land have been assembled. Such plans will be developed and reviewed prior to implementation and will include public involvement in their development. Basic stewardship activities such as boundary identification, litter cleanup, and informal access facilities will not require such plans or review.

B. Wetland creation, restoration or enhancement activities shall be first subjected to engineering and hydrological study to ensure such activities will not cause or aggravate flooding or other water related impacts on adjoining lands or in downstream areas.

C. The Department will, as funds permit, develop an office in the local area to serve the needs of staff to implement this project and to serve the needs of the local community regarding Department programs. This facility will have as one of its functions, an environmental education component stressing wetland values, ecology and management.

D. All activities involving physical alteration of land will be subjected to further SEQRA and/or NEPA review and all regulatory requirements and approvals including necessary permits will be obtained or satisfied prior to construction.

E. The Department will undertake a thorough examination of the legislative authorities and statutes regarding taxation of state lands and payments in lieu of taxes and work with the State legislature to amend these authorities and statutes if it is determined to be in the best public interest to do so.

F. Mitigation measures such as erosion control, timing of construction, seeding, and other conservation measures will be strictly adhered to in all construction-related activities that may be implemented as part of this project and shall be incorporated into any permits that may be issued for these activities.

This Statement of Findings/Record of Decision will serve as the written facts and conclusions relied upon in reaching this decision.

Dated: October 22, 1991.

Nancy M. Kaufman,

Deputy Regional Director.

[FR Doc. 91-26276 Filed 10-30-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Meeting of the National Park System Advisory Board

AGENCY: National Park Service.

ACTION: Meeting of the National Park System Advisory Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the National Park System Advisory Board will be held on November 20, 1991 in Washington, DC. It will be a special meeting called for the purpose of preparing and adopting the Board's views and recommendations on the Shenandoah Valley Civil War Sites Study, to be transmitted to Congress with the study as required by section 1204(a)(3) of Public Law 101-628, the Civil War Sites Study Act of 1990.

The study deals with those sites and structures situated in the Shenandoah Valley of Virginia which are thematically tied with the nationally significant events that occurred in the region during the Civil War, including but not limited to General Thomas "Stonewall" Jackson's 1862 "Valley Campaign" and General Philip Sheridan's 1864 campaign culminating in the battle of Cedar Creek on October 19, 1864. It is to identify the sites, determine their relative significance, assess short- and long-term threats to their integrity, and provide alternatives for the preservation and interpretation of the sites by Federal, State and local governments or other public or private entities, as may be appropriate. Such alternatives are to include, but not be limited to, designation as units of the National Park System or as affiliated areas. The study is to examine methods and make recommendations to continue current land use practices, such as agriculture, where feasible.

The Board will meet at 3:30 p.m. on Wednesday, November 20, 1991 in room 7000A of the Main Interior Building, 1849 C Street, NW., Washington, DC, adjourning by 5:30 p.m. The meeting will be open to the public. Space and

facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Chairman may also permit attendees to address the Board, but may restrict the length of presentations as necessary to allow the Board to complete its agenda by 5:30 p.m.

Persons wishing further information on the meeting, or to file a written statement with the Board, may contact Mr. David L. Jervis, Office of Policy, National Park Service (P.O. Box 37127, Washington, DC 20013-7127) at 202-208-4030. Written statements must be received in hand by the time of the meeting. Anyone wishing further information on the Shenandoah Valley Civil War Sites Study may contact Dr. Marilyn W. Nickels, Interagency Resources Division, National Park Service (P.O. Box 37127, Washington, DC 20013-7127) at 202-343-9539. Draft minutes of the meeting will be available for inspection about 12 weeks after the meeting in room 1220 of the Main Interior Building, 18th and C Streets, Washington, DC.

John H. Davis,

Acting Deputy Director.

[FR Doc. 91-26179 Filed 10-30-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) have been submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Darlene Proctor, (202) 275-7322. Comments regarding this information collection should be addressed to Interstate Commerce Commission, Attn: FORMS, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: ICC Desk Officer, Washington, DC 20503.

Type of Clearance: Extension of the expiration date of a currently approved collection without change.
Bureau/Office: Office of Proceedings.
Title of Form: Rules for System Diagram Maps, Financial Assistance of Railroad Lines.
OMB Form Number: 3120-0045.
Agency Form No.: None.
Frequency: System Diagram Maps—Annually. Financial Assistance—Discretion of applicant.
No. of Respondents: System Diagram Maps—300. Financial Assistance—16.
Total Burden Hours: System Diagram Maps—15,000. Financial Assistance—645.

Type of Clearance: Reinstatement of a previously approved collection for which approval has expired.
Bureau/Office: Office of Compliance and Consumer Assistance.
Title of Form: Application for Extension of Emergency Temporary Authority Granted under Section 10928 of the Interstate Commerce Act.
OMB Form Number: 3120-0099.
Agency Form No.: OCCA-19.
Frequency: At discretion of applicants.
No. of Respondents: 45.
Total Burden Hours: 22.5.

Type of Clearance: Reinstatement of a previously approved collection for which approval has expired.
Bureau/Office: Office of Economics.
Title of Form: Service Life Study.
OMB Form Number: 3120-0037.
Agency Form No.: ACV-159.
Frequency: Annually.
No. of Respondents: 17.
Total Burden Hours: 680.

Type of Clearance: Reinstatement of a previously approved collection for which approval has expired.
Bureau/Office: Office of Economics.
Title of Form: Quarterly Report of Freight Commodity Statistics.
OMB Form Number: 3120-0031.
Agency Form No.: QCS.
Frequency: Quarterly and annually.
No. of Respondents: 17.
Total Burden Hours: 18,445.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-26186 Filed 10-30-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-59; Sub 1X]

Chattahoochee Valley Railway Co.—Abandonment Exemption—in Chambers County, AL, and Troup County, GA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Chattahoochee Valley Railway Company (CHV), of its entire system, a 9.23-mile line of railroad between Riverview, Chambers County, AL, and North West Point, Troup County, GA, subject to historic preservation and salvage conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 30, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by November 10, 1991, petitions to stay must be filed by November 10, 1991, and petitions for reconsideration must be filed by November 20, 1991. Requests for a public use condition must be filed by November 10, 1991.

ADDRESSES: Send pleadings, referring to Docket No. AB-59 (Sub-No. 1X), to:
(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and
(2) Petitioner's representative: William P. Jackson, Jr., Jackson & Jessup, P.C., P.O. Box 1240, Arlington, VA 22210.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: October 23, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-26242 Filed 10-30-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31954]

CSX Corp., et al.—Corporate Family Transaction Exemption—Richmond, Fredericksburg and Potomac Railroad Co.

CSX Corporation (CSX), CSX Transportation, Inc. (CSXT), Richmond, Fredericksburg and Potomac Railway Company (RF&P Railway), and Richmond, Fredericksburg and Potomac Railroad Company (RF&P Railroad) filed a notice of exemption for a transaction within their corporate family. The

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

transaction was expected to be consummated on or about October 10, 1991.

CSX is a non-carrier holding company that owns 100 percent of the common stock of CSXT, a Class I rail carrier. CSX also controls RF&P Railroad indirectly as follows: CSX, as noted, controls CSXT, that, in turn, owns 80 percent of the outstanding voting stock of Richmond-Washington Company, a non-carrier holding company that, in turn, owns 62.7 percent of the outstanding voting stock of RF&P Corporation, a non-carrier holding company that, in turn, owns 100 percent of the outstanding common stock of RF&P Railroad. See CSX Corp.—Control—Chessie and Seaboard C.L.I., 363 I.C.C. 518, 595–596 (1980).

Through the corporate family transaction, RF&P Railway, a newly created non-carrier affiliate of CSXT, will directly acquire substantially all of the railroad assets and operations of RF&P Railroad.

This corporate family transaction qualifies for the class exemption at 49 CFR 1180(d)(3) because it will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: G. Paul Moats, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006, Peter J. Shudtz, CSX Corporation, One James Center, Richmond, VA 23219, and Charles A. Hartz, Jr., Richmond, Fredericksburg & Potomac Railroad Company, 2134 West Laburnun Avenue, P.O. Box 11281, Richmond, VA 23230.

As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Distr., 360 I.C.C. 60 (1979).

Dated: October 23, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–26187 Filed 10–30–91; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 506]

Railroad Cost of Capital-1991; Notice

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 1991 cost of capital.

SUMMARY: The Commission is instituting a proceeding to determine the railroad industry's cost of capital rate for 1991. The decision solicits comments on: (1) The railroads' 1991 cost of debt capital; (2) the railroads' 1991 current cost of preferred stock equity capital; (3) the railroads' 1991 cost of common stock equity capital; and (4) the 1991 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due November 12, 1991. Statements of railroads are due February 17, 1992. Statements of other interested parties are due March 16, 1992. Rebuttal statements by railroads are due March 30, 1992.

ADDRESSES: Send an original and 15 copies of statements and an original and 1 copy of the notice of intent to participate to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Interstate Commerce Commission, room 2215, Washington, DC 20423. Telephone: (202) 275–7428. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

This action will not significantly affect either the quality of the human environment or energy conservation. Nor will it have a significant economic impact on a substantial number of small entities.

Authority: 49 U.S.C. 10704(a).

Decided: October 23, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–26286 Filed 10–30–91; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55; Sub 379X]

CSX Transportation, Inc.—Abandonment Exemption—in Somerset County, PA; Notice

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of 9.71 miles of rail line in Somerset County, PA, between milepost −0.02, at Garrett, and milepost 8.07, at Berlin, including (1) the Pine Hill Branch, between milepost 6.2=0.0, at Pine Hill Junction, and the end of the branch at milepost 1.11; and (2) the Niver Branch, between milepost 7.0=0.0, at Niver Junction, and the end of the branch at milespost 0.51 subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 30, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by November 12, 1991, petitions to stay must be filed by November 15, 1991, and petitions for reconsideration must be filed by November 25, 1991. Requests for public use condition must be filed by November 12, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 379X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative: Karen Anne Koster—J150, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 (TDD for hearing impaired (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20433. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD Services (202) 275–1721.).

Decided: October 23,1991.

By the Commission, Chairman Rhilbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–26287 Filed 10–30–91; 8:45 am]

BILLING CODE 7035–01–M

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[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) Report of State Convictions to INS.

(2) No form number. Office of Justice Programs, Bureau of Justice Assistance.

(3) As aliens are convicted.

(4) State or local governments. States are required to provide INS with records of convictions of aliens. INS will use the information to deport alien offenders. Records will be provided by central repositories of criminal justice records to the courts.

(5) 70,052 annual responses at .3125 hours per response.

(6) 21,891 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on this item is encouraged.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 91–26227 Filed 10–30–91; 8:45 am]

BILLING CODE 4410–18–M

Antitrust Division

[Civil Case No. 91–1822, D.D.C.]

United States v. General Binding Corporation, et al.; Public Comments and Responses on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States publishes below the comments received on the proposed Final Judgment in *United States* v. *General Binding Corporation, et al.*, Civil Action No. 91–1822, filed in the United States District Court for the District of Columbia, together with the United States' responses to the comments.

Copies of the comments and responses are available for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue NW., Washington, DC 20530, and for inspection and copying at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue NW., Washington, DC 20001.

Joseph H. Widmar,

Director of Operations Antitrust Division.

Comments Relating to the Proposed Final Judgment and the United States' Response to the Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby files the attached comments relating to the proposed Final Judgment in this civil antitrust proceeding, as well as the United States' responses to those comments.

This action commenced on July 24, 1991, when the United States filed a Complaint alleging that the proposed acquisition of VeloBind Incorporated ("VeloBind") by the General Binding Corporation ("GBC") would likely lessen competition substantially in the high-volume binding machine market in the United States. The United States simultaneously filed a proposed Final Judgment, Competitive Impact Statement, and Stipulation signed by each of the parties stipulating to entry of the Final Judgment.

The sixty-day period provided for by 15 U.S.C. 16(b) for submission of public comments expired on October 4, 1991. The United States received two comments on the proposed Final Judgment, one from the ChannelBind Corporation ("ChannelBind"), a wholly-owned subsidiary of the Xerox Corporation, and the other from Mr. Charles T. Hill, President of Communications Packaging Services, Inc., a Velobind dealer. The United States responded individually to each comment on the proposed Final Judgment.

ChannelBind manufactures a desktop binding machine that is distributed by certain VeloBind dealers. In its comments, ChannelBind expressed concern over whether, after the proposed acquisition, ChannelBind and other producers of binding machines would have adequate distribution for their products to be able to effectively compete with the combined GBC/VeloBind. As explained in its response, the United States believes that competition at the distribution level will not be adversely affected by the proposed acquisition. Moreover, the proposed Final Judgment would provide for increased competition in the distribution of high-volume binding machines by creating a new distributor for strip-binding machines that has the potential to distribute other types of binding machines as well.

In his comments, Mr. Hill correctly points out that the proposed acquisition likely would reduce competition in the market for high-volume binding machines, as alleged in the Complaint in this case, but questions whether the proposed Final Judgment would adequately safeguard competition. For the reasons discussed in the Competitive Impact Statement filed with this Court on July 24, 1991, the United States believes that the proposed Final Judgment would substantially eliminate the risks to competition presented by the proposed acquisition.

Pursuant to 15 U.S.C. 16(e), the proposed Final Judgment cannot be entered unless this Court determines that the Judgment is in the public interest. The focus of this determination is whether the relief provided by the proposed Final Judgment is adequate to remedy the antitrust violations alleged

in the Complaint.[1] After careful consideration of the two comments, the United States continues to believe that for the reasons explained in the Competitive Impact Statement, the proposed Final Judgment would be adequate to remedy the risks to competition presented by the proposed acquisition and therefore that entry of the proposed Final Judgment is in the public interest.

After the two comments and the responses of the United States have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d), of the APPA, the United States will move this Court for entry of the proposed Final Judgment.

Dated: October 22, 1991.

Respectfully submitted,

M. Lee Anne Washington

Katherine J. Palmer

Attorneys, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., Washington, DC 20001.

Certificate of Service

I hereby certify that a copy of the foregoing Comments Relating to the Proposed Final Judgment and the United States' Response to the Comments was mailed, first-class, postage pre-paid to the following persons on the 22nd day of October, 1991:

Mark Crane, Esquire, John H. Spelman, Esquire, Hopkins & Sutter, 888 16th Street NW., Washington, DC 20006

Richard William Austin, Esquire, John R. Keys, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502

Steve Rubin, Esquire, General Binding Corporation, One GBC Plaza, Northbrook, Illinois 60062

Ronald G. Carr, Esquire, Thomas E. Unterman, Esquire, W. Stephen Smith, Esquire, Morrison & Forrester, 2000 Pennsylvania Avenue NW., Washington, DC 20006–1812.

Katherine J. Palmer,

Attorneys, U.S. Department of Justice, Antitrust Division, 555 Fourth Street N.W., Washington, DC 20001.

Xerox Corporation

P.O. Box 1600

Stamford, Connecticut 06904

October 2, 1991.

P. Terry Lubeck,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, Judiciary Center Building, room 10–437, 555 4th Street, NW., Washington, DC 20001

Re: *United States* v. *General Binding Corp. and VeloBind Inc, Civ. Action No. 91 1822*

Dear Mr. Lubeck: The following comments on the proposed Final Judgment in the above matters are submitted on behalf of ChannelBind Corporation, a wholly-owned subsidiary of Xerox Corporation ("ChannelBind").

ChannelBind manufacturers and markets a desktop binder and supplies that directly compete with the High-volume binding machines (as that term is defined in the Verified Complaint) manufactured and sold by General Binding Corporation ("GBC") and VeloBind Incorporated ("VeloBind"). The ChannelBind machine uses a process whereby sheets of paper are bound by crimping a metal channel. VeloBind sells a High-volume binding machine utilizing a plastic strip process. GBC manufactures and sells machines employing plastic comb and thermal processes, as well as distributing, on an OEM basis, the VeloBind plastic strip binder. Nevertheless, the ChannelBind machine addresses the same applications and competes for the same customers are the GBC and VeloBind High-volume binding machines.

ChannelBind believes that the proposed Final Judgment should not be entered and GBC should not be permitted to acquire VeloBind without restrictions or modifications in addition to those contemplated by the proposed final judgment. Specifically, ChannelBind believes that the proposed Final Judgment fails to adequately address the impact of a combined GBC and VeloBind on the distribution channels for binding machines; that ChannelBind and other competitors of GBC/VeloBind will be foreclosed from the dealer channel as a result of the proposed acquisition; and, that, as a consequence, a combined GBC and VeloBind will be in a position to exert its market dominance to drive out other competitors and ultimately raise prices for High-volume binding machines and related supplies.

The Competitive Impact Statement filed by the Government in conjunction with the proposed Final Judgment recognized the importance of GBC's strong distribution system:

> GBC has established an effective distribution system consisting of dedicated distributors and in-house sales offices, which provided buyers with various services that are essential to GBC's sales success, including on-site demonstrations, emergency repair services and in many cases access to graphics expertise. To design and manufacture a machine and to establish such a distribution system would require two or more years.

56 FR 37229, 37232 (Aug. 5, 1991).

Distribution of binding machines and supplies through a direct sales force requires a large number of sales and service outlets and support personnel. Among the manufacturers of binding equipment only the largest, GBC, has predominantly relied on a direct sales force to distribute its products. VeloBind, ChannelBind and other competitors all rely primarily upon a network of dealers.

There is, however, a relatively small number of dealers, less than 200, which sell binding equipment. Of that number, it is estimated that 100 dealers distribute 85% of the binding machines. Moreover, typically a dealer will not carry different brands of binding machines utilizing the same process. That means that typically a dealer will push only two, or at most three, different brands—for example, a plastic strip binder, a thermal binder and perhaps one other.

VeloBind, with a large number of dealers who are members of the National Office Machine Dealers Association ("NOMDA"), currently has most of the strongest dealers. In fact, it reasonably can be hypothesized that GBC has sought to acquire VeloBind not for its products or technology, but for this strong dealer network. Acquisition of VeloBind provides GBC with that opportunity to expand its sales coverage by significantly increasing the number of its dealers. Moreover, since the combined GBC/VeloBind offers the dealer three different processes, the effect is to preclude other competitors from those dealers.

Because there is a finite and limited number of dealers available to manufacturers of binding machines, and dealers typically carry a limited number of brands, it is very difficult for competitors, particularly new entrants, to obtain effective dealers. Manufacturers, in essence, compete not only for sales to customers but also for dealers to distribute their products. GBC, the dominant seller of High-volume binding machines has acquire not only the second largest competitor, but also the manufacturer with the largest and strongest network of dealers. Consequentially, ChannelBind and others in the market now face the prospect of competing for dealers against an entity with overwhelming market power. The inevitable result will be a foreclosure of competitors from the dealer distribution channel.[1]

Moreover, this foreclosure is not merely the result of the combined size of GBC and VeloBind. A combined GBC and VeloBind has the market power necessary to impose exclusive dealing and full line forcing agreements upon its dealers. ChannelBind has already encountered several instances since announcement of the merger where GBC and VeloBind have pressured dealers to take on a full range of binding products from GBC/VeloBind and/or not to take on a competitive product. Initially the coercion of dealers primarily has been indirect—in the form of threatening to increase dealer quotas if a full line of GBC/VeloBind products is not promoted or threatening to appoint another dealer in a theretofore exclusive territory if a dealer carries the ChannelBind product. Once the acquisition is fully consummated nothing

[1] *United States* v. *Bechtel Corp.*, 1979–1 Trade Case. (CCH) ¶ 62.430 (N.D. Cal. 1979), *aff'd*, 648 F.2d 660, 665 (9th Cir. 1981), *cert. denied*, 454 U.S. 1083 (1982).

[1] Gestetner Corporation's inability to be a major competitive force during their previous OEM relationship within VeloBind may in large part be attributable to difficulties it experienced in establishing an effective distribution network. To the extent that Gestetner is successful in obtaining dealers under the proposed arrangement, the effect can only be to magnify the foreclosure from distribution outlets of other competitors, including those such as ChannelBind with innovative technologies

currently stands in way of GBC from directly forcing its dealers into exclusive dealing arrangements

In order to lessen the restrictions on competition likely to result from the combination of GBC and VeloBind, ChannelBind r. spectfully suggests that the proposed Final Judgment be modified to prohibit GBC from selling High-volume binding machines or supplies for such machines to dealers or distributors on the condition that the dealers or distributors not deal in the products of competitors. Specifically, the Final Judgment should contain provisions which enjoin GBC, directly or indirectly from:

A. Selling or making a contract or agreement for the sale of any High-volume binding machine or supplies for such machine on the condition, agreement or understanding that the purchaser shall not purchase, advertise, display, sell, promote or distribute machines or supplies sold or supplied by any competitor of GBC.

B. Selling or making any contract or agreement for the sale of any High-volume binding machine or supplies for such machine on the condition, agreement or understanding that the purchaser thereof shall also purchase or promote one or more other products manufactured, sold or distributed by GBC.

Furthermore, GBC should be required to make its dealers and distributors aware of such prohibitions and include them in any contract or agreement with the dealer or distributor for the sale or distribution of any High-volume binding machine or related supplies.

In conclusion, ChannelBind believes that the acquisition of VeloBind by GBC as presently contemplated by the proposed Final Judgment is not in the public interests as it is likely to result in a significant lessening of competition, foreclose other competitors who may offer superior value and technology from effective channels of distribution and raise entry barriers to the industry. At a minimum, the Final Judgment should not be entered without insuring that there is free and unhindered competition in the distribution of binding products and that dealers, distributors and the public are insured access to all competitive products. ChannelBind believes that the above proposed modifications to the Final Judgment will significantly help in achieving those objectives.

Very truly yours,

Peter W. Marshall,

Assistant General Counsel, Trade Regulation and Litigation.

October 21, 1991.

Peter W. Marshall,

Esquire, Assistant General Counsel, Trade Regulation and Litigation, Xerox Corporation, P.O. Box 1600, Stamford, Connecticut 06904

Re: *United States* v. *General Binding Corporation and VeloBind Incorporated* Civil Action No. 91–1822

Dear Mr. Marshall: This letter responds to your letter submitted on behalf of ChannelBind Corporation ("ChannelBind"), a wholly-owned subsidiary of the Xerox Corporation, commenting on the proposed Final Judgment in the referenced civil antitrust case, which challenges the proposed acquisition of VeloBind Incorporated ("VeloBind") by General Binding Corporation ("GBC"). The complaint in that case alleges that the proposed acquisition, as originally structured, would violate section 7 of the Clayton Act, since it would likely lessen competition substantially in the high-volume binding machine market in the United States. As originally structured, the acquisition would have made GBC the sole manufacturer and distributor of VeloBind high-volume strip-binding machines and related supplies. However, the proposed Final Judgment would establish the Gestetner Corporation ("Gestetner") as a competing source of VeloBind high-volume strip-binding machines and supplies.

In your letter, you express concern over the effect of the acquisition on distribution outlets for competing manufacturers of high-volume binding machines such as ChannelBind. Specifically, you suggest that after the acquisition, the VeloBind dealer network would be unwilling to carry high-volume binding machines not manufactured by the combined GBC/VeloBind. You also suggest that the combined companies would have sufficient market power to require the independent VeloBind dealers to carry a complete line of GBC/VeloBind products or even to deal exclusively in their products. Finally, you suggest that through such conduct, the combined GBC/VeloBind might ultimately be able to drive out competitors and raise prices for high-volume binding machines. To address these concerns, you request that the proposed Final Judgment be modified to prohibit such conduct.

We have given careful consideration to the concerns that you have raised, but for the reasons discussed below, we believe that the modifications you propose are unnecessary.

The proposed acquisition would not reduce the number of existing independent distribution outlets for high-volume binding machines, since GBC is not acquiring the VeloBind dealer network. VeloBind's dealers are independent businesses, most of which are members of the National Office Machine Dealers Association ("NOMDA"). In addition, none of VeloBind's agreements with these dealers prohibit them from selling competing binding machines. Thus, many of these dealers already sell high-volume binding machines produced by companies other than VeloBind, and after the acquisition, they will be able to continue this practice.

In addition, the proposed Final Judgment would establish Gestetner as a new distribution channel of high-volume binding machines. Gestetner offers a distribution channel similar to that of the current VeloBind dealer network. Gestetner is a large, well-established office equipment retailer with about 35 direct sales offices and over 400 dealers throughout the United States, accounting for over $100 million in sales in 1990. Under the proposed Final Judgment, Gestetner will be selling strip-binding machines in competition with the high-volume binding machines of the combined GBC/VeloBind. Like the VeloBind dealers, no contractual restriction would prohibit Gestetner from selling competing binding machines. Thus, Gestetner could be able to carry any other binding machi manufacturer's product, including the ChannelBind brand. Gestetner would be an ideal entry vehicle for a new or existing manufacturer of high-volume binding machines to achieve significant distribution of its product. The proposed Final Judgment therefore would expand current distribution opportunities for competing binding equipment manufacturers.

Your concern that the combined GBC/VeloBind might attempt to foreclose competing manufacturers from the existing VeloBind dealer network appears unwarranted. Currently, many VeloBind dealers find it profitable to offer more than one brand of high-volume binding machines. In order for GBC/VeloBind to convince these dealers to discontinue carrying other manufacturers' products, it must compensate these dealers for any lost profits the dealers experience due to the loss of a competing manufacturer's product line or it must risk losing these experienced VeloBind dealers. GBC/VeloBind would therefore be imposing a cost upon itself to foreclose a competing high-volume binding machine manufacturer from the VeloBind distribution network. The crux of your argument rests on the assumption that GBC/VeloBind could nonetheless profit from such behavior because its competitors would find it too costly to locate alternative distribution channels. The proposed Final Judgment, by establishing Gestetner as a significant new distributor of high-volume binding equipment makes this scenario improbable.

Your concern over the foreclosure of distribution channels must also be considered in light of current distribution methods. High-volume binding machines are currently distributed through many channels. The most successful independent distribution channel is the NOMDA dealers. NOMDA dealers carry a broad range of office products ranging from copiers and fax machines to typewriters and binding machines. According to NOMDA August 1991 statistics, of the nearly 4200 NOMDA dealers nationwide, roughly 550 dealers sell binding equipment. VeloBind currently has about 160 authorized dealers selling its strip-binding machines. Roughly 70 percent of the VeloBind dealers are NOMDA members and only about 25 to 30 percent of them are document packaging specialists, which means that they specialize in binding and finishing documents. No empirical evidence indicates that a binding machine manufacturer must sell its product through a specialized binding machine dealer in order to be successful. Although such specialized dealers exist, full-line office products dealers also successfully distribute binding machines. Gestetner plans to distribute strip-binding machines as a complementary product to its complete line of office products through its existing dealer network.

Gestetner's entrance into the distribution of binding equipment establishes a potentially excellent retail outlet for competing manufacturers' products. Its willingness to enter into the distribution of binding

equipment suggests that other office products dealers would not be reluctant to sell binding equipment if offered favorable terms by manufacturers. Therefore, we have no reason to believe that competing binding machines will be unable to achieve adequate distribution.

Your concern that a combined GBC/VeloBind will be able to exert market power, drive out competitors, and raise prices is similarly addressed by the proposed Final Judgment. The supply agreement between Gestetner and GBC, which along with the related license agreement forms the basis of the Final Judgment, would insure that Gestetner receives a substantial wholesale discount on both the strip-binding machines and supplies that it purchases from GBC. This wholesale price would give Gestetner the ability to compete independently of GBC and therefore would provide a restraint on GBC's ability to increase prices anticompetitively. Additionally, Gestetner would have the right, under the license agreement, to manufacture or have manufactured the patented VeloBind plastic strips. Since no significant patents cover the strip-binding machines, no license would be required for Gestetner to begin producing the machines. Thus, if GBC attempted to increase prices anticompetitively or if Gestetner determined that it could manufacture the machines and supplies at a lower cost than it could purchase them from GBC, Gestetner would be free to exercise the license agreement and to produce the machines and supplies. It would then be able to competitively price its machines and supplies against the same GBC product offerings.

We appreciate your bringing your concerns to our attention. However, for the foregoing reasons, we believe that they do not warrant any modification to the proposed Final Judgment and that entry of in the proposed Final Judgment in its present form is in the public interest.

Sincerely,

P. Terry Lubeck,

Chief, Litigation II Section, Antitrust Division.

Communication Packaging Services, Inc.

2105 S. 170th Street

New Berlin, WI 53151

October 2, 1991

Katherine J. Palmer,

Attorneys, Antitrust Division, U.S. Department of Justice, 555 4th Street NW., Washington, DC 20001

Re: GBC acquisition of Velobind

CPS has been a level 4 Velobind dealer for four years. Based on all the information that has been received from Velobind and GBC, it is to be "business as usual." The Velobind product will remain separate, have stronger financial backing and dealers will have additional products to market.

Taking this at face value and assuming it to be true. The purpose of this letter is to raise some questions regarding the effects on the business community.

(1) How does a reduction in competition benefit the business community? When the Justice Department initially raised their objection, I was contacted to voice support for the merger. First, I wanted to discuss this with some of my customers to get their input (bank, manufacturer, brokerage firm, etc.) Not one was in favor due to concerns for reduced competition, R&D, and service levels. Wise purchasing people look for quality, service, and price.

(2) Doesn't GBC have tremendous impact on the market due to their method of distribution?

A. sell direct to consumers

B. sell to dealers that sell to consumers

C. sell to wholesalers that sell to dealers that sell to consumers

(3) Regarding increased competition with the re-introduction of Gestetner—

A. Why is Gestetner now interested in a product that they marketed in the 1980's with limited success?

B. If the license agreement is exercised by Gestetner, Gestetner will not be obligated to purchase any machines from GBC. Can Gestetner elect this option and simply "walk away"?

C. Then where would competition come from?

(4) Why did the Justice Department limit their analysis to high-volume binding machines?

Why not also include the supply items-plastic spiral combs, report covers, decorations, index tabs and all the other supply items?

Theoretically, it should be easy for someone else to enter this market. However, GBC markets at so many price levels, could they not raise the price in one area and reduce it in another to eliminate competition?

For example: ¼" black spiral combs

$28.92/100,

10.73/100,

2.16/100

These sales were for the exact same product, same quantity, same time-period and to commercial accounts.

(5) I quote from Earl W. Kintner's "A Robinson-Patman Primer", Chapter 1, Free Enterprise and the Role of Government Regulation.

The major premise of antitrust is an unshakable belief in the efficacy of a competitive, free enterprise economy. The ideal to be realized is unlimited opportunity for free entry into the marketplace, unlimited opportunity for self-development, and the resolution of economic issues by the unthwarted exercise of free market forces.

The real question should be—Is this merger in the best interest of the American business community?

Thank you,

Charles T. Hill,

President.

October 21, 1991.

Charles T. Hill,

President, Communication Packaging Services, Inc., 2105 S. 170th Street, New Berlin, WI 53151

Re: *United States* v. *General Binding Corporation and VeloBind Incorporated;* Civil Action No. 91–1822

Dear Mr. Hill: This letter responds to the letter you submitted in your capacity as President of Communication Packaging Services, Inc. ("CPS") commenting on the proposed Final Judgment in the reference civil antitrust case, which challenges the proposed acquisition of VeloBind Incorporated ("VeloBind") by General Binding Corporation ("GBC"). The complaint in that case alleges that the proposed acquisition, as originally structured, would violate section 7 of the Clayton Act, since it would likely lessen competition substantially in the high-volume binding machine market in the United States. As originally structured, the acquisition would have made GBC the sole manufacturer and distributor of VeloBind high-volume strip-binding machines and related supplies. However, the proposed Final Judgment will establish the Gestetner Corporation ("Gestetner") as a competing source of VeloBind high-volume strip-binding machines and supplies.

In your letter, you note that based on all of the information that CPS, a VeloBind dealer, has received from VeloBind and GBC, the combined GBC/VeloBind plans to continue "business as usual" if the proposed acquisition is consummated. You then raise several questions regarding the possible effects of the proposed acquisition. You express concern that the acquisition would result in a reduction of competition in the marketplace, which you suggest would be amplified due to GBC's existing distribution network. You then question whether the proposed Final Judgment, which would establish Gestetner in the high-volume binding machine market, would adequately address your concern about competition being reduced.

We have given careful consideration to the points that you have raised. While we appreciate your comments, we continue to believe that for the reasons discussed in the Competitive Impact Statement, which are summarized below, the proposed Final Judgment would substantially eliminate the risks to competition presented by the proposed acquisition.

The proposed Final Judgment would establish Gestetner as a new distribution channel for high-volume binding machines and related supplies. Gestetner is a large, well-established retailer of office equipment with about 35 direct sales offices and over 400 dealers throughout the United States, accounting for over $100 million in sales in 1990. Gestetner currently is the exclusive distributor of VeloBind machines and supplies in Europe. It was a successful distributor of VeloBind machines and supplies in the United States in the 1980s. A change in management philosophy at VeloBind in the late 1980s prompted the termination of Gestetner's United States distributorship arrangement. Its European arrangement remained intact, however.

Under the proposed Final Judgment and related supply and license agreements, Gestetner has an opportunity to once again profit from selling strip-binding machines and supplies in the United States. Additionally, Gestetner's dealers offer a distribution channel similar to that of current VeloBind dealers, many of which carry competing types of binding equipment, such as comb-binding and thermal-binding. Like the VeloBind dealers, Gestetner would be able to

engage in similar distribution practices. As a result, Gestetner could be an ideal entry vehicle for a new or existing manufacturer of high-volume binding machines to achieve significant distribution of its product. The proposed Final Judgment therefore would expand current distribution opportunities for competing binding equipment manufacturers.

You expressed a concern that Gestetner could exercise the license agreement and, without an obligation to purchase machines from GBC, could "walk away" from distributing binding products. Gestetner has made a significant investment of time and money in negotiating the supply and license agreements with GBC. These agreements would provide Gestetner with the ability to obtain strip-binding machines and supplies on favorable terms. It is highly unlikely that Gestetner would abandon binding product distribution since its arrangement with GBC would provide Gestetner with an excellent opportunity to derive a substantial profit from selling strip-binding machines and supplies through Gestetner's existing dealer network.

You also expressed a concern that the complaint only addresses the market for high-volume binding machines and does not mention supplies for these machines. Although the complaint is limited to machines, the proposed Final Judgment, and the related supply and license agreements, cover both machines and supplies. Under the supply agreement, Gestetner would be able to purchase the patented VeloBind plastic strips from GBC at a substantial discount, and under the license agreement, Gestetner has the option at any time to make the strips itself. The substantial discounts for the strips would allow Gestetner to compete effectively with GBC and other distributors of machines and supplies. Since strip-binding customers tend to purchase supplies from their machine supplier, Gestetner has a strong incentive to sell as many machines as possible in order to generate sales of the profitable supplies.

We appreciate your bringing your concerns to our attention. While we understand your concerns, we believe that the proposed Final Judgment would adequately safeguard competition in the sale of high-volume binding machines and supplies in the United States and that entry of the proposed Final Judgment is in the public interest.

Sincerely,

P. Terry Lubeck,

Chief, Litigation II Section Antitrust Division.

[FR Doc. 91-26192 Filed 10-30-91; 8:45 am]

BILLING CODE 4410-01-M

United States v. Borland International, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Northern District of California in *United States* v. *Borland International, Inc., et al.*, Civil Action No. C 91 3666MHP. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h). The Complaint in this case alleged that the proposed acquisition of Ashton-Tate Corporation by Borland International, Inc. would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, by lessening competition in the sale of relational database management system software for personal computers using the DOS operating system ("RDBMS software") in the United States. Borland and Ashton-Tate are the two leading sellers of RDBMS software in the United States.

The proposed Final Judgment enjoins Borland from initiating any claim that asserts claims of copyright infringement in the command names, menu items, menu command hierarchies, command languages, programming languages and file structures used in Ashton-Tate's dBASE family of products. The proposed Final Judgment further directs Borland, within a period of ninety days from the entry of the Final Judgment, to attempt to resolve the action of *Ashton-Tate Corp.* v. *Fox Software, Inc., et al.*, No. CV 88-6837 TJH (Tx), filed in the United States District Court for the Central District of California, under certain circumstances, and to dismiss its claims against Fox Software if Fox dismisses its counterclaims against Ashton-Tate.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Constance K. Robinson, Chief, Communications and Finance Section, Antitrust Division, room 8104, 555 Fourth Street, NW., Washington, DC 20001, (202) 514-5621.

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United States District Court for the Northern District of California

United States of America, Plaintiff, v. *Borland International, Inc., and Ashton-Tate Corporation*, Defendants. Filed: 10-17-91. Civil Action No. C 91-3666 MHP. Stipulation, Antitrust.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. The parties shall abide by and comply with the provisions of the Final Judgment, except for the provisions of paragraph IV.C., pending entry of the Final Judgment.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

4. Ashton-Tate's consent to the Final Judgment is expressly conditioned upon the closing of the acquisition as defined in paragraph II.A. of the Final Judgment. Ashton-Tate's consent is null and void should for any reason the acquisition not close.

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United States District Court for the Northern District of California

United States of America, Plaintiff, v. *Borland International, Inc., and Ashton-Tate Corporation*, Defendants. Filed: 10/17/91. Civil Action No. C 91–3666–MHP. Final Judgment. Antitrust.

Final Judgment

Whereas, Plaintiff, United States of America, having filed its Complaint herein on October 17, 1991, and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And Whereas, Defendants have agreed to be bound by the provisions of this final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is prompt and certain remedial action to ensure that, after the acquisition referred to herein, Defendants' ability to exercise market power and restrain competition in the sale of relational database management system software is not enhanced by an attempt to enforce claims to certain alleged intellectual property rights;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged and Decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. *Acquisition* means the Merger Agreement signed by Borland, Object, Inc., a wholly-owned subsidiary of Borland, and Ashton-Tate on July 9, 1991, pursuant to which Borland will acquire 100 percent of the common stock of Ashton-Tate in exchange for Borland common stock.

B. *Ashton-Tate* means the defendant Ashton-Tate Corporation, its successors and assigns, its parents, subsidiaries, affiliates, directors, officers, managers, agents, employees, attorneys, any other persons under its direct or indirect control, and any other person acting for or on behalf of it.

C. *Borland* means the defendant Borland International, Inc., its successors and assigns, its parents, subsidiaries, affiliates, directors, officers, managers, agents, employees, attorneys, any other persons under its direct or indirect control, and any other person acting for or on behalf of it.

D. *Ashton-Tate's dBASE family of products* means the computer programs bearing the dBASE trademark for the management of computer databases of which Ashton-Tate is the rightful owner and publisher, the exclusive rights and privileges in and to the copyrights of which Ashton-Tate owns, including revisions or updates to such programs.

E. *The Los Angeles action* means *Ashton-Tate Corp.* v. *Fox Software, Inc., et al.*, No. CV 88–6837 TJH (Tx), filed in the United States District Court for the Central District of California.

F. *The Boston action* means *Lotus Development Corp.* v. *Borland International, Inc.*, Civil Action No. 90–11662–K, filed in the United States District Court for the District of Massachusetts.

G. *Person* means any natural person, corporation, association, firm, partnership, or other business or legal entity.

III. Applicability

A. The provisions of this Final Judgment shall apply to Defendants, to their successors and assigns, to their subsidiaries, affiliates, directors, officers, managers, agents, employees, attorneys, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Nothing herein shall suggest that any copyright or other intellectual property right is legally cognizable, valid, or enforceable by Defendants or any other person.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to, or create any remedies for, any third party.

IV. Injunction

A. Defendants are hereby enjoined and restrained from initiating or making any claim or counterclaim that asserts claims of copyright infringement in the command names, menu items, menu command hierarchies, command languages, programming languages and file structures used in and recognized by Ashton-Tate's dBASE family of products, standing alone and apart from other aspects of those computer programs.

B. Nothing in paragraph IV.A. shall preclude defendants from asserting in any litigation the legal right to use the command names, menu items, menu command hierarchies, command languages, programming languages and file structures or from asserting copyright protection in and copyright infringement of the computer program code (including its structure, sequence and organization) and other aspects of the user interface of Ashton-Tate's dBASE family of products.

C. Should the district court in the Boston action dismiss Lutus Development Corporation's claims for

copyright protection in its menu command hierarchy, Borland shall seek prompt resolution of the Los Angeles action in a manner consistent with the Boston court's disposition and paragraph IV.A. above. Notwithstanding the foregoing, within a period of ninety (90) days from the entry of this Final Judgment, Borland shall use its best efforts to resolve the Los Angeles action in a manner consistent with paragraph IV.A. above; provided, however, that Borland shall dismiss with prejudice its claims in the Los Angeles action with fifteen (15) days following the dismissal with prejudice of Fox's counterclaims in the Los Angeles action.

V. Affidavits

Within ten (10) business days of filing of this Final Judgment and every thirty (30) days thereafter until settlement or dismissal of the Los Angeles action, defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with section IV. of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such report, discussed in any way, the resolution of the Los Angeles action. Defendants shall maintain full records of all efforts made to resolve the Los Angeles action.

VI. Visitorial Provisions

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and an reasonable notice to the Defendants made to their principal offices, be permitted:

1. Access during office hours of the Defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the Defendants and without restraint or interference from it, to interview officers, employees and agents of the Defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the Defendants' principal office, the Defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceeding to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a Defendant to Plaintiff, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by Plaintiff to that Defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

VII. Expiration of Judgment

This Final Judgment will expire on the tenth anniversary of its date of entry.

VIII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

IX. Statement of Public Interest

Entry of this Final Judgment is in the public interest.

United States District Judge.

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United States District Court for the Northern District of California

United States of America, Plaintiff, v. *Borland International, Inc., and Ashton-Tate Corporation*, Defendants. Filed: 10/22/91. Civil Actin No. C 91–3666 MHP. Competitive Impact Statement, Antitrust.

Judge Patel.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On October 17, 1991, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, alleging that the acquisition of Ashton-Tate Corporation ("Ashton-Tate") by Borland International, Inc. ("Borland"), would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The complaint alleges that the effect of the acquisition may be substantially to lessen competition in the sale of relational database management system ("RDBMS") software for IBM and IBM-compatible personal computers ("PCs") running the MS–DOS/PC–DOS operating system ("DOS") in the United States.[1]

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[1] The term "RDBMS software" shall hereinafter refer to relational database management system software for IBM and IBM-compatible personal computers running the DOS operating system. The term "software" refers to computer programs, which are series of instructions that direct the operation of a computer. Computer software falls into two basic categories: applications software and systems software. RDBMS software is used to perform a particular task such as word processing, communications, or statistical analysis; examples included dBASE, Paradox, WordPerfect, and Lotus 1–2–3. Operating systems, which are a type of systems software, provide basic functions on the computer, control the operation of the hardware, and manage the execution of applications software. The operating system that is most important in analyzing this merger is the Disk Operating System ("DOS") developed by Microsoft for IBM for use on IBM's PC. This operating system is sold by IBM

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Borland and Ashton-Tate, both major software vendors, are the two largest firms, in terms of market share, currently selling RDBMS software in the United States. Borland's RDBMS software is sold under the trade name "Paradox," and Ashton-Tate's RDBMS software is sold under the tradename "dBASE." After the acquisition, Borland will control approximately 60 percent, measured by dollar sales and units shipped, of the United States RDBMS software market. The acquisition thus results in a substantial increase in concentration in a market that is already concentrated and in which entry by new firms is difficult. The complaint seeks, among other relief, to have the acquisition adjudged in violation of Section 7 of the Clayton Act.

On October 17, 1991, the United States and Borland and Ashton-Tate filed a Stipulation by which they consented to the entry of a proposed Final Judgment. Under the proposed Final Judgment, as explained more fully below, Borland is enjoined from initiating any claim that asserts copyright infringement in the command names, menu items, menu command hierarchies, command languages, programming languages, and file structures used in Ashton-Tate's dBASE family of products. The proposed Final Judgment further directs Borland, at any time, to dismiss Ashton-Tate's pending copyright suit against Fox Software, Inc. ("Fox"), with prejudice within fifteen days following the dismissal with prejudice of Fox's counterclaims against Ashton-Tate. Additional details regarding Borland's obligations with respect to the Fox suit are described more fully under Section III.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations of the Judgment.

II. Events Giving Rise to the Alleged Violation

On July 9, 1991, Borland agreed to purchase Ashton-Tate by acquiring 100 percent of Ashton-Tate's stock in exchange for Borland stock valued at approximately $440 million. Under the Agreement and Plan of Merger, Ashton-Tate has become a wholly-owned subsidiary of Borland.

Borland is engaged in the business of designing and marketing personal computer software for businesses and software developers. Borland distributes its products domestically and internationally primarily through distributors, dealers, and original equipment manufacturers and also sells directly to corporate, governmental, educational, and individual customers. Borland products are available in 13 languages for distribution in 41 different countries. The company's three principal products are RDBMS software, spreadsheet software and programming languages.

Ashton-Tate was also engaged in the business of the design and marketing of personal computer software for businesses and software developers. Ashton-Tate also distributed its products domestically and internationally, with products available in 20 languages in more than 50 countries. The company's major products included RDBMS, word processing, integrated decision support, spreadsheet, graphics, and utility software. The company offered a comprehensive line of consulting, training and support services for individuals, corporations and government. Ashton-Tate's current RDBMS software, dBASE III Plus and dBASE IV, were enhancements of its first product, dBASE II.

As explained more fully below, the United States filed its complaint because the acquisition would likely reduce competition in the development and sale of RDBMS software in the United States. The market for RDBMS software is concentrated, and entry is difficult. Prior to the acquisition, Borland and Ashton-Tate were the two leading firms offering RDBMS software. Some of the other competitors offer products ("xBASE clones") that are based on the dBASE programming language, which has become an industry standard, and that are alternatives to dBASE and Paradox. Paradox, on one hand, and dBASE and the xBASE clones, on the other hand, were in significant competition with one another.[2] Prior to the acquisition, an increase in the price of either Paradox or dBASE would cause so many customers to switch to other RDBMS products that the price increase would be unprofitable. After the acquisition, however, the price increase would be profitable because Borland could capture a significant portion of that diversion—those customers who would switch to other RDBMS products that are close substitutes now owned by Borland. Finally, other firms in the industry could not reposition their product lines so as to prevent the acquisition from having this effect.

RDBMS software has multi-table, relational, and programming capabilities, in addition to other functional differences, that distinguish it from other types of software. Products such as flat-file, spreadsheet, and word processing software and even general programming languages and tools contain some of the same functions and can, in some instances, be used to perform certain applications accomplished with RDBMS software. The United States found, however, that given the functional differences and limitations of these other software products, customers would find it more difficult or costly to use those products to perform the same applications. Accordingly, the United States concluded that customers would not likely substitute other software products for RDBMS software in the face of a "small but significant and non-transitory increase in price." [3]

The United States further concluded that, for the development and sale of RDBMS software, the relevant geographic market is the United States. The United States market for RDBMS software is concentrated. In 1990, total United States sales of RDBMS software were approximately $260 million. In 1990, Ashton-Tate and Borland were the two largest sellers of RDBMS software, together accounting for nearly 60 percent of dollar sales and over 60 percent of units shipped. Concentration as measured by the Herfindahl-Hirschman Index ("HHI") [4] for the United States RDBMS software market will increase significantly as a result of the acquisition. Based on 1990 dollar sales, the HHI for RDBMS software in

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under the name PC-DOS and (with minor variations that are not relevant here) by Microsoft and various other companies under the name MS-DOS. The term "DOS:" is used herein to refer to both PC-DOS and MS-DOS

[2] After the acquisition, a price increase could take the form of elimination or reduction of competitive price discounts as well as increases in the list price.

[3] Department of Justice Merger Guidelines § 2.11 (June 14, 1984), *reprinted in* 4 Trade Reg. Rep. (CCH) ¶13,102, at 20,533 (hereinafter cited as "DOJ Merger Guidelines at ___").

[4] The HHI is a measure of market concentration calculated by squaring the market share of each firm in the market and then summing the resulting numbers. For example, for a market supplied by four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 900 + 900 + 400 + 400 = 2600$). The HHI takes into account the relative sizes and distribution of firms in a market. It approaches zero when a market is supplied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is supplied by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparities in size among these firms increases.

the United States was 1726. The acquisition would increase the HHI by 1403 points to 3129 and the relevant market would become significantly more concentrated. Approximately twelve other firms account for the remainder of RDBMS market share, with no one firm holding a significant portion of market share as compared to the combined Borland/Ashton-Tate. Such an increase in concentration in an already concentrated market raises significant concerns, in combination with other factors, that the transaction may result in the exercise of market power.

In addition, the United States determined that entry into the RDBMS software market is difficult and time consuming. It generally takes over two years to conceptualize, design, develop, test, and bring to market a full RDBMS software product. Moreover, new entrants also face difficulty in achieving market acceptance due to the preference of many customers for companies with well-established reputations and proven products and the comparatively high cost of effectively marketing a new high-end software product. Finally, existing RDBMS software customers find it difficult to switch to another RDBMS software product because there are considerable costs associated with switching, including (1) rewriting end user applications written for the particular RDBMS software; (2) retraining both end users and (3) reconfiguring data file structures (where necessary).

The United States also took into account the fact that the personal computer software industry continues to be affected by a number of technological changes. In particular, a new operating environment developed by Microsoft, called "Windows," offers opportunities for the introduction of new application software, including RDBMS software. Indeed, Microsoft, which heretofore has not offered a RDBMS product, recently announced that it is developing a new RDBMS product for Windows that it expects to introduce next year. These facts suggest that the current market shares of Ashton-Tate and Borland may not fully describe their competitive significance for the future. On the other hand, the United States determined that market changes resulting from these technological advances are likely to be evolutionary rather than revolutionary and are not sufficient in themselves to dispel the competitive concerns raised by this combination of the two leading sellers in the market.

In evaluating the competitive effects likely to result from the acquisition, it was particularly relevant that several of the smaller competitors in the RDBMS software market offer compatibility with the dBASE standard by using some of the command names, menu command hierarchies, command languages and other features of the dBASE programming language. As a result, dBASE customers can switch to those products (known as "xBASE clones") at lower cost than to other products. Ashton-Tate has, however, asserted copyright claims to dBASE language which have impaired the ability of the xBASE firms to sell to certain customers, and which could limit the ability of the xBASE clones to inhibit possible anticompetitive effects of Borland's acquisition of Ashton-Tate. The largest of the xBASE firms, Fox, is a defendant in a suit ("Los Angeles action") seeking to enjoin its use of the dBASE programming language in Fox's RDBMS products.[5] Ashton-Tate has enjoyed competitive advantages as a result of its adoption as a "standard" by corporate customers.[6] The continued assertion of copyright claims to the dBASE language thus would enable the merged firm unilaterally to raise the price of its RDBMS products.

In sum, for all the above reasons, the United States found that Borland's acquisition of Ashton-Tate, without the relief provided for in the proposed Final Judgment, posed a substantial likelihood that Borland could profitably exercise its market power by raising prices to the detriment of RDBMS software customers.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment, which requires Borland to refrain from exercising certain copyright claims related to the dBASE RDBMS software products, provides relief that will assure the continuation of a competitive marketplace. As discussed above in Section II, the acquisition raised the likelihood that Borland could raise the price of Paradox or dBASE without fear of losing a significant amount of sales to other products that are close substitutes. Borland's ability to exercise market power in that way could be constrained to an extent by the ability of customers to switch to the xBASE clones. The pendency or future threat of copyright claims relating to the dBASE language, however, has inhibited competition and would likely diminish the effectiveness of that constraint on Borland's market power. As a result, the United States sought to assure the continued availability of competitive alternatives by requiring Borland to relinquish certain copyright claims acquired through its acquisition of Ashton-Tate. In requiring this relief, the United States expresses no view on the validity or invalidity of any claims to copyright protection by any party to this Final Judgment or any third party or on the appropriateness of asserting any such claims.

Section IV.A. of the proposed Final Judgment enjoins Borland, after the acquisition of Ashton-Tate, from initiating or making any claim or counterclaim that asserts claims of copyright infringement in the command names, menu items, menu command hierarchies, command languages, programming languages and file structures used in and recognized by Ashton-Tate's dBASE family of products, standing alone and apart from other aspects of those computer programs. In addition, Section IV.C. of the proposed Final Judgment requires that Borland shall, at any time, dismiss with prejudice its claims in the Los Angeles action within fifteen days following the dismissal with prejudice of Fox's counterclaims in the Los Angeles action.

Section IV.C. also requires that within a period of ninety days from the entry of the proposed Final Judgment, Borland shall use its best efforts to resolve the Los Angeles action in a manner consistent with the intent of Section IV.A. Finally, section IV.C. requires that should the district court presiding over an unrelated copyright infringement action filed against Borland by Lotus Development Corporation (the "Boston action")[7] dismiss Lotus' claims for

[5] On November 18, 1988, Ashton-Tate filed a complaint in the United States District Court for the Central District of California against Fox and SCO alleging copyright infringement of its dBASE programs. *Ashton-Tate Corporation* v. *Fox Software, Inc. and The Santa Cruz Operation, Inc.*, Civ. No. CV 88-6837 TJH (C.D. Cal., filed Nov. 18, 1988). The complaint alleges that "the organization, structure, and sequence of the dBASE programs embody and reflect forms of expression original to Ashton-Tate, including the novel application development and data management environments they present to the computer program user." Complaint at 3. Among other things, Ashton-Tate seeks an injunction restraining Fox "from copying, selling, marketing or distributing" its products; other equitable relief; and unspecified damages and attorneys' fees. *Id.* at 8. On December 8, 1988, Fox filed a counterclaim alleging that, among other things, Ashton-Tate "has monopolized and is attempting to monopolize the U.S. market for microcomputer database management systems." Answer and Counterclaims at 15. The lawsuit is still pending.

[6] Widespread use of a RDBMS software product results in a large pool of trained users, applications developers and compatible tools that in turn promotes the further use of that product. "Clone" or compatible products also benefit from and promote such standardization.

[7] *Lotus Development Corp. v. Borland International, Inc.*, Civ. No. 90-11862-K, filed in the

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copyright protection in its menu command hierarchy, Borland shall seek prompt resolution of the Los Angeles action in a manner consistent with the Boston court's disposition and Section IV.A.

Section IV.B. permits Borland, after the acquisition, to assert in any litigation its legal right to use the command names, menu items, menu command hierarchies, command languages, programming languages and file structures as well as the copyright protection in and copyright infringement of the computer program code (including its structure, sequence and organization) and other aspects of the user interface of Ashton-Tate's dBASE family of products. This paragraph makes clear that the proprietary dBASE software itself and its underlying code are not being placed in the public domain. In sum, the proposed Final Judgment effectively prohibits Borland from using its control of the dBASE standard as a means of inhibiting competition from other vendors of dBASE products on the basis of use of the dBASE language.[8]

The United States, Borland and Ashton-Tate have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15 provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions under the Clayton Act. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and response(s) of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to Constance K. Robinson, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., room 8104, Washington, DC 20001.

The proposed Final Judgment provides that the Court retains jurisdiction over this action and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation or enforcement.

VI. Alternative to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment filed with this Court, litigation to seek an injunction to block Borland's acquisition of Ashton-Tate. The United States rejected that alternative because the relief in the proposed Final Judgment should prevent the acquisition from having significant anticompetitive effects in the RDBMS software market, while allowing any procompetitive effects the acquisition may produce.

VII. Determinative Documents

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Dated: October 22, 1991.

Respectfully submitted,

Constance K. Robinson,
Chief, Communications & Finance Section.
Richard L. Rosen,
Assistant Chief Communications & Finance Section.
United States Department of Justice, Antitrust Division.
Patricia, A. Shapiro.
Brent E. Marshall.
Kenneth W. Gaul.
Jennifer L. Otto.
Attorneys, United States Department of Justice, Antitrust Division, 555 Fourth Street, NW., room 8104, Washington, DC 2001, (202) 514–5796.

United States District Court for the District of Massachusetts.

[8] Section II.D. of the proposed Final Judgment defines the "dBASE family of products" to which the prohibition applies as including "the computer programs bearing the dBASE trademark for the management of computer databases of which Ashton-Tate is the rightful owner and publisher, the exclusive rights and privileges in and to the copyrights of which Ashton-Tate owns, including revisions or updates to such programs."

[FR Doc. 91–26191 Filed 10–30–91; 8:45am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Small Business Retirement Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m. Monday, November 4, 1991, in room C–2313, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Small Business Retirement Plans Working Group was formed by the Advisory Council to study issues relating to Small Business for employee benefit plans covered by ERISA.

The purpose of the November 4, meeting is to assess information received and develop a report, with recommendations, to the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 31, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 31, 1991.

Signed at Washington, DC this 25 day of October, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91-26205 Filed 10-30-91; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Enforcement of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 11:30 a.m. Monday, November 4, 1991, in room C-2313, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Enforcement Working Group was formed by the Advisory Council to study issues relating to Enforcement for employee benefit plans covered by ERISA.

The purpose of the November 4, meeting is to assess information received and develop a report, with recommendations, to the Advisory Council. The working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 31, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meting if received on or before October 31, 1991.

Signed at Washington, DC this 25 day of October, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91-26206 Filed 10-30-91; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Retiree Medical Benefits of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 1:30 p.m. Monday, November 4, 1991, in room C-2313, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Retiree Medical Benefits Working Group was formed by the Advisory Council to study issues relating to Retiree Medical Benefits for employee benefit plans covered by ERISA.

The purpose of the November 4, meeting is to assess information received and develop a report, with recommendations, to the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 31, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 31, 1991.

Signed at Washington, DC this 25th day of October, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91-26207 Filed 10-30-91; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Tuesday, November 5, 1991, in suite N-3427 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Seventy-First meeting of the Secretary's ERISA Advisory Council which will begin at 9:30 a.m., is to receive and discuss progress reports from each of the Council's work groups i.e., Enforcement; Retiree Medical Benefits; Small Business Retiree Plans, and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before October 31, 1991 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523-8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 31, 1991.

Signed at Washington, DC this 25 day of October, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91-26208 Filed 10-30-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts, and the Humanities

Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in room 714, from 9:30 a.m. to 5 p.m. on Tuesday, November 26, 1991.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after January 1, 1992.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that matters discussed at the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552b and that it is essential to close the meeting to protect against the unauthorized disclosure of financial and commercial data and to avoid frustrating the operations of the Council.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, David Fisher, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call (202) 786–0322.

David Fisher,

Advisory Committee, Management Officer.

[FR Doc. 91–26267 Filed 10–30–91; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Literary Publishing Section) to the National Council on the Arts will be held on November 19, 1991 from 2 p.m.–6 p.m., November 20–21 from 9 a.m.–6 p.m. and November 22 from 9 a.m.–3 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 22 from 12 noon–3 p.m. The topics will be guidelines review and policy discussion.

The remaining portions of this meeting on November 19 from 2 p.m.–6 p.m., November 20–21 from 9 a.m.–6 p.m. and November 22 from 9 a.m.–12 noon are for the purpose of reviewing proposals for support under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: October 21, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–26251 Filed 10–31–91; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Care of Collections/ Conservation Section) to the National Council on the Arts will be held on November 18–19, 1991 from 9:15 a.m.–5:30 p.m. in room M–14 at the Nancy Hanks Center 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 18 from 9:15 a.m.–10 a.m. The topics will be opening remarks and general discussion.

The remaining portions of this meeting on November 18 from 10 a.m.–5:30 p.m. and November 19 from 9:15 a.m.–5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: October 21, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–26252 10–30–91; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Care of Collections/ Collection Maintenance Section) to the National Council on the Arts will be held on November 21, 1991 from 9:15 a.m.–5:30 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9:15 a.m.–10 a.m. The topics will be opening remarks and general discussion.

The remaining portion of this meeting from 10 a.m.–5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, as amended, this session will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: October 21, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–26253 Filed 10–30–91; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chorus Section) to the National Council on the Arts will be held on November 18–19, 1991 from 9 a.m.–7 p.m., November 20–21 from 9 a.m.–6 p.m. and November 22 from 9 a.m.–4 p.m. in room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 22 from 2 p.m.–4 p.m. The topics will be guidelines review and policy discussion.

The remaining portions of this meeting on November 18–19 from 9 a.m.–7 p.m., November 20–21 from 9 a.m.–6 p.m. and November 22 from 9 a.m.–2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: October 21, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–26254 Filed 10–30–91; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Organizations Section) to the National Council on the Arts will be held on November 18–22, 1991 from 9 a.m.–9 p.m. and November 23 from 9:30 a.m.–4 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 23 from 2 p.m.–4 p.m. The topic will be guidelines review and policy discussion.

The remaining portions of this meeting on November 18–22 from 9 a.m.–9 p.m. and November 23 from 9:30 a.m. to 2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or positions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: October 21, 1991.

Yvonne M. Savine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–26255 Filed 10–30–91; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting two notices of information collections that will affect the public. Interested persons are invited to submit comments by November 25, 1991. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335, and to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: NSF Survey of Neuroscientists.

Responses/Burden Hours: 800 responses; 30 minutes per response.

Abstract: The National Science Foundation has actively supported neuroscience research throughout the period of rapid growth over the past two decades. This evaluation study will attempt to determine NSF's role compared to NIH/ADAMHA in identifying and supporting new investigators and new areas of neuroscience research.

Dated: October 25, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91-26178 Filed 10-30-91; 8:45 am]

BILLING CODE 7555-01-M

Division of Earth Sciences; Advisory Committee for Earth Sciences; Notice of Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide oversight review of the Tectonics Program in the Division of Earth Sciences. The entire meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b (c)(4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Name: Advisory Committee for Earth Sciences/Committee of Visitors.

Date: November 20-21, 1991.

Time: 8 a.m. to 5 p.m. each day.

Place: The National Science Foundation, 1110 Vermont Avenue NW., Washington, DC 20550.

Type of Meeting: Closed.

Agenda: Oversight review of the Tectonics Program, including examination of proposals, reviewer comments, and other privileged materials.

Contact: Dr. James F. Hays, Division Director, Division of Earth Sciences, room 602, National Science Foundation, Washington, DC 20550. Telephone: (202) 357-7958.

Dated: October 28, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-26275 Filed 10-30-91 8:45 am]

BILLING CODE 7555-01-M

Division of Engineering Infrastructure Development Special Emphasis Panel, Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in the Division of Engineering Infrastructure Development.

Date: November 21, 1991.

Time: 8:15 to 5:30.

Place: State Plaza Hotel, 2117 E Street, NW., Washington DC.

Type of meeting: Closed.

Agenda: Review and Evaluate Research Experiences for Undergraduates (REU) Proposals.

Contact: Dr. Lucy C. Morse, Associate Program Manager, Human Resources Development, National Science Foundation, 1776-G DEID, Washington, DC 20550 (202-786-9634).

Dated: October 28, 1991.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 91-26274 Filed 10-30-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-220 and 50-410]

Niagara Mohawk Power Corporation; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirement of 10 CFR part 50, appendix E, section IV.F.2, to Niagara Mohawk Power Corporation (the licensee) for Nine Mile Point Nuclear Station Unit Nos. 1 and 2, located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

By letter dated September 19, 1991, the licensee requested an exemption pursuant to 10 CFR 50.12(a) from the requirement of 10 CFR part 50, appendix E, section IV.F.2, to conduct the annual exercise of the Nine Mile Point Nuclear Station emergency plan in 1991. The licensee had planned to conduct an exercise of its emergency plan on October 1, 1991. The scheduled exercise was to be the annual off-year exercise with only partial participation by State and local emergency response organizations since they had fully participated in the 1991 exercises at the FitzPatrick and Ginna sites. The previous emergency preparedness exercise at the Nine Mile Point Nuclear Station was conducted on October 2, 1990. The licensee requests that an exemption be granted because the requirement to perform an exercise of the Nine Mile Point Nuclear Station emergency plan in 1991 is not necessary to achieve the underlying purpose of the emergency planning rule in that the emergency plan was adequately exercised and demonstrated in 1991 during the licensee's response to the Site Area Emergency event on August 13 1991. A Site Area Emergency was declared at Nine Mile Point Nuclear Station Unit 2 on August 13, 1991, in response to the loss of annunciators coincident with a transformer fault and an automatic shutdown of the reactor. Upon declaration of the Site Area Emergency, the licensee implemented its Site Emergency Plan and attendant procedures. The Operations Support Center, Technical Support Center, Emergency Operations Facility, Joint News Center, Oswego County Emergency Operations Center, and the New York State Emergency Operations Center were staffed and activated. The proposed exemption would be for 1991 only. The schedule for future exercises would not be affected by this one-time exemption. The next Nine Mile Point Nuclear Station emergency plan exercise would be conducted in 1992.

The Need for the Proposed Action

The proposed exemption is needed to avoid the duplication of conducting another exercise, and to avoid the unnecessary use of licensee, State and local resources, that would only serve to reconfirm the adequacy of the plan, as well as the licensee's capability to implement the plan. These capabilities were demonstrated during the August 13, 1991, Site Area Emergency event.

Environmental Impacts of the Proposed Action

A 1991 annual emergency plan exercise would not be conducted for the Nine Mile Point Nuclear Station if the requested exemption is granted by the NRC. Whether or not an exercise is conducted, the environment is not impacted since neither case involves the release of radioactive or nonradioactive effluents. Furthermore, the NRC had determined that an environmental impact statement for 10 CFR 50.47, "Emergency Plans," and 10 CFR part 50, appendix E, "Emergency Planning and Preparedness for Production and Utilization Facilities," in which the requirement for an annual emergency plan exercise is contained, was not required (45 FR 55402, August 19, 1980). Specifically, the NRC's "Draft Negative Declaration; Finding of No Significant Impact" (45 FR 3913), January 21, 1980), states that " * * * the impacts on the human environment of the proposed rule will be insignificant * * *." Similarly, not conducting an annual emergency plan exercise as required by the rule will have no impact on the human environment.

Alternatives to the Proposed Action

Since we have concluded that the environmental impacts of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. Since the staff has determined that granting this exemption would not result in any environmental impacts, denial of this request would only result in requiring the licensee to demonstrate certain capabilities under "drill" conditions that were already demonstrated under "actual" conditions. Also, denial of this request would result in the additional expenditure of State and local emergency response agencies and licensee resources over that which has already been expended in responding to the August 13, 1991, Site Area Emergency event.

Alternative Use of Resources

The proposed action does not involve the use of environmental resources not previously considered in the Final Environmental Statements for the Nine Mile Point Nuclear Station Unit Nos. 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption from the requirement of 10 CFR part 50, appendix E, section IV.F.2, dated September 19, 1991, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 25th day of October 1991.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Acting Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–26263 Filed 10–30–91; 8:45 am]

BILLING CODE 4590–01–M

[Docket Nos. 50–277 and 50–278]

Philadelphia Electric Co., Public Service Electric and Gas Co., Delmarva Power and Light Co., Atlantic City Electric Co., Peach Bottom Atomic Power Station, Units 2 and 3; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Philadelphia Electric Company, et. al. (licensee) for an amendment to Facility Operating License Nos. DPR–44 and DPR–56, issued to the licensee for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on September 18, 1991 (56 FR 47242).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) related to 10 CFR part 50, appendix J, Section III, Primary Reactor Containment leakage testing.

The NRC staff has concluded that the licensee's request cannot be granted in full. The licensee was notified of the Commission's denial of a portion of the proposed change by letter dated October 23, 1991. The portion of the proposed change which was denied changed Technical Specification wording related to testing of certain valves in a manner which may create confusion.

By December 2, 1991, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelopha Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 18, 1976 and supplemented April 19, 1984, October 10, 1986, April 21 and June 23, 1988 and May 17, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. Washington, DC and at the Local Public Document Room located at government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 23rd day of October 1991.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Project Directorate I–2, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–26264 Filed 10–30–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Revision of OMB Circular No. A-34; Notification of Issuance

AGENCY: Office of Management and Budget.

ACTION: The Office of Management and Budget (OMB) issued a revision to Part VI of OMB Circular No. A-34, "Instructions on Budget Execution" on October 1st of this year. Anyone wishing to review or comment on part VI or any other part of this Circular should write the office specified below under "Addresses". All comments will be incorporated in the next revision or responded to.

SUMMARY: OMB Circular No. A-34 is issued pursuant to the provisions of laws commonly referred to as the Antideficiency Act, the Congressional Budget and Impoundment Control Act of 1974, the "M" Account Law (Pub. L. 101-510), the Federal Credit Reform Act of 1990, and Executive Order 11541 of July 1, 1970. These laws are codified in chapters 13 and 15 of title 31 of the United States Code, except for the Impoundment Control Act, which is codified in 2 U.S.C. 681-688.

The revision to part VI of the Circular incorporates the requirements of the Federal Credit Reform Act of 1990, under which the budget accounting procedures for Federal credit programs were revised. This part sets forth instructions on apportionment procedures and budget execution reports for credit accounts.

EFFECTIVE DATE: Part VI of OMB Circular No. A-34 became effective on October 1, 1991.

ADDRESSES: Comments should be submitted to the Office of Management and Budget, Budget Concepts Branch, room 6236, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503. Copies of part VI are available from the Government Printing Office (GPO), Order and Information Desk, (202) 783-3238. FAX orders and inquiries should be sent to (202) 275-0019. For copies of the other parts, write to the Budget Concepts Branch.

FOR FURTHER INFORMATION CONTACT: Edward Rea (202) 395-3172 or Betty Bradshaw (202) 395-3144.

Darrell A. Johnson,

Assistant Director for Administration.

[FR Doc. 91-26318 Filed 10-30-91; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Membership of the Performance Review Board (PRB)

AGENCY: Office of the United States Trade Representative.

ACTION: Membership of the Performance Review Board (PRB).

SUMMARY: The following staff members are designated to serve on the Performance Review Board: Chair—W. Douglas Newkirk, Alternate—Peter Allgeier, Members—Barbara Gordon, John Hopkins, James M. Murphy, Jr., Donald Phillips, Mary Tinsley, Gary Edson, Ex-offico, Lorraine Green, Executive Secretary.

EFFECTIVE DATE: October 24, 1991.

FOR FURTHER INFORMATION CONTACT: Lorraine Green, Director, Human Resources (202) 395-7360.

John T. Hopkins,

Assistant United States Trade Representative for Administration.

[FR Doc. 91-26260 Filed 10-30-91; 8:45 am]

BILLING CODE 3190-01-M

POSTAL SERVICE

Temporary Humanitarian Airlift Service for Parcels to Estonia, Latvia, Lithuania, and the Union of Soviet Socialist Republics

AGENCY: Postal Service.

ACTION: Establishment of a temporary parcel post airlift service to Estonia, Latvia, Lithuania, and the Union of Soviet Socialist Republics (U.S.S.R.).

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is establishing a temporary airlift service for parcel post mailed by persons in the United States to individuals or families in Estonia, Latvia, Lithuania, and the Union of Soviet Socialist Republics (U.S.S.R.). This service will be offered from November 1, 1991, through March 31, 1992.

EFFECTIVE DATES: November 1, 1991, through March 31, 1992.

ADDRESSES: Director, Office of Classification and Rates Administration, Marketing and Customer Service Group, room 8430, 475 L'Enfant Plaza West, SW., Washington, DC 20260-5903. Copies of all written comments received will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 268-5180.

SUPPLEMENTARY INFORMATION: This service is being offered by the Postal Service to provide persons in the United States with a means of sending humanitarian aid to individuals or families in those four countries that is faster than regular surface mail, at a cost lower than airmail service. Airlift parcels will receive surface transportation to the U.S. dispatching exchange office and will be transported by air to the destination country. Airmail parcels will received priority over airlift parcels in dispatch.

The Postal Service is establishing temporary airlift service to these countries of the service. The Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedures Act regarding proposed rulemaking (5 U.S.C. 553); and 39 U.S.C. 407, concerning international postal arrangements, does not require advance notice and opportunity for submission of comments. Nevertheless, the Postal Service invites public comment at the above address to help it monitor the effectiveness of this service.

To obtain airlift serve the following conditions apply:

1. Address parcels to a specific individual or family at a postal address in one of the four countries listed above and show the return address of the sender.

2. Endorse the parcel boldly Humanitarian Airlift, in red on the address side.

3. No special services, including insurance, are available.

4. Pay postage at the surface international parcel post rate plus an airlift surcharge of $1 per pound. A rate chart for surface, airlift, and airmail follows. The maximum weight for a parcel is 22 pounds.

5. Follow all mailing conditions in the Individual Country Listings of the International Mail Manual (IMM) for Estonia, Latvia, Lithuania, and the U.S.S.R. except:

a. Parcels to Estonia, Latvia, or Lithuania must not show the Union of Soviet Socialist Republics (U.S.S.R.) as the destination country. Make the destination country Estonia, Latvia, or Lithuania, as appropriate, written in English. Do not address mail "via" a third country.

b. The country-specific prohibitions and restrictions of the Soviet Union no longer pertain to mail to Estonia, Latvia, or Lithuania. Because none of these countries has provided a country-specific list of items prohibited or restricted entry, mailers must assume responsibility for the items they mail.

Complete customs declarations in English with an interline translation in French or the language used in the country of destination.

c. When addressing parcels to the Soviet Union, it is recommended that, in addition to the full address the specific Republic's name be shown on the next-to-last line (above the country name) either in English or with an interline translation in English. For a current list of items prohibited or restricted by the Soviet Union, see Postal Bulletin 21795, 8–8–91, pages 53–54.

Post offices will forward airlift parcels by surface to the New Jersey International and Bulk Mail Center, NJ 099. The international parcel post rates for Estonia, Latvia, Lithuania, and the Union of Soviet Socialist Republics are:

Weight not over (lbs.)	Surface	Airlift	Airmail
1	$6.55	$7.55	$12.30
2	6.55	8.55	19.30
3	6.65	11.65	26.30
4	10.75	14.75	33.30
5	12.85	17.85	40.30
6	14.95	20.95	46.30
7	17.05	24.05	52.30
8	19.15	27.15	58.30
9	21.25	30.25	64.30
10	23.35	33.35	70.30
11	25.45	36.45	76.30
12	27.55	39.55	82.30
13	29.65	42.65	88.30
14	31.75	45.75	94.30
15	33.85	48.85	100.30
16	35.95	51.95	106.30
17	38.05	55.05	112.30
18	40.15	58.15	118.30
19	42.25	61.25	124.30
20	44.35	64.35	130.30
21	46.45	67.45	136.30
22	48.55	70.55	142.30

The Individual Country Listing pages for Estonia, Latvia, Lithuania, and the Union of Soviet Socialist Republics in the IMM will be amended to reflect these changes and airlift rates.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91–26198 Filed 10–30–91; 8:45 am]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

1992 Railroad Experience Rating Proclamations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: The Railroad Retirement Board is required by paragraph (1) of section 8(c) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)), as amended by Public Law 100–647, to proclaim by October 15 of each year certain systemwide factors used in calculating experience-based employer contribution rates for the following year. The Board is further required by section 8(c) of the Act to publish the amounts so determined and proclaimed. Pursuant to section 8(c), the Board gives notice of the following systemwide factors used in the computation of individual employer contribution rates for 1992:

(1) The balance to the credit of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 1991, is $337,266,851.84;

(2) The balance of any new loans to the account, including accrued interest, is zero;

(3) The system compensation base is $2,799,430,259.23;

(4) The system unallocated charge balance is −$63,102,691.92;

(5) The pooled credit ratio is 0.0312;

(6) The pooled charge ratio is zero;

(7) The surcharge rate is zero.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 1991. The balance in notice (2) is based on data as of September 1991. The determination made in notices (5) through (7) apply to the calculation, under section (8)(a)(1)(C) of the Act, of employer contribution rates for 1992.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Gerald E. Helmling, Chief of Experience Rating, Bureau of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 telephone (312) 751–4567, (FTS) 386–4567.

Dated: October 22, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91–26256 Filed 10–30–91; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

October 24, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Benton Oil & Gas Co.
Common Stock, $.01 Par Value (File No. 7–7455)

Scherer (R.P.) Corp.
Common Stock, No Par Value (File No. 7–7456)

United Healthcare Corp.
Common Stock, $.01 Par Value (File No. 7–7457)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 15, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly marks and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–26203 Filed 10–30–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 01/02–0145]

Dewey Investment Co.; Surrender of License

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1991)), Dewey Investment Company, 85 Charter Oak Street, Manchester, Connecticut 06040, incorporated under the laws of the State of New York, has surrendered its license, No. 02/02–0145 issued by the SBA on April 9, 1962.

Dewey Investment Company has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of

Dewey Investment Company is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 24, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 91-26219 Filed 10-30-91; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0190]

MNC Ventures, Inc.; Surrender of License

Notice is hereby given that MNC Ventures, Inc., 502 Washington Avenue, suite 800, Towson, Maryland 21204, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). MNC Ventures, Inc. was licensed by the Small Business Administration on March 3, 1990.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on October 7, 1991, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 24, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 91-26220 Filed 10-30-91; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0498]

Onondaga Venture Capital Fund; Surrender of License

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1991)), Onondaga Venture Capital Fund, 309 State Tower Building, Syracuse, NY 13202, incorporated under the laws of the State of New York has surrendered its license, No. 02/02-0498 issued by the SBA on September 30, 1987.

Onondaga Venture Capital fund has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of Onondaga Venture Capital Fund is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 24, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 91-26221 Filed 10-30-91; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting on Tuesday, November 12, 1991 at 10 a.m., at the Hovey House Library of Boston College, 140 Commonwealth Avenue, Boston, Massachusetts, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or other present.

For further information, write or call Mr. Joseph D. Pellegrino, District Director, U.S. Small Business Administration, 10 Causeway Street, room 265, Boston, Massachusetts 02222-1093, (617) 565-5561.

Dr. Caroline J. Beeson,

Assistant Administrator for Advisory Councils.

[FR Doc. 91-26222 Filed 10-30-91; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of St. Louis and Eastern Missouri, will hold a public meeting at 9 a.m. on Tuesday, November 12, 1991, at the U.S. Small Business Administration, 815 Olive Street, North Conference Room (Mid-level), St. Louis, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Robert L. Andrews, District Director, U.S. Small Business Administration, 815 Olive Street, room 242, St. Louis, Missouri, 63101, (314) 539-6600.

Dr. Caroline J. Beeson,

Assistant Administrator for Advisory Councils.

[FR Doc. 91-26223 Filed 10-30-91; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0549]

Barclays Capital Investors Corporation; Issuance of a Small Business Investment Company License

On May 9, 1991, a notice was published in the **Federal Register** (56 FR 21520) stating that an application has been filed by Barclays Capital Investors Corporation, New York, New York, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1991)), for a license to operate as a small business investment company.

Interested parties were given until close of business June 9, 1991, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0549 on October 3, 1991, to Barclays Capital Investors Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 24, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 91-26224 Filed 10-30-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 21-PTC; Control of Parts Shipped Prior to Type Certificate Issuance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21-PTC, Control of Parts Shipped Prior to Type Certificate Issuance, for review and comments. The proposed AC 21-PTC provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of the Federal Aviation Regulations (FAR) part 21, Certification Procedures for Products and Parts.

DATES: Comments submitted must identify the proposed AC 21-PTC File

Number PO–220–0315, and be received by Jan. 29, 1991.

ADDRESSES: Copies of the proposed AC 21–PTC can be obtained from, and comments may be returned to, the following: Federal Aviation Administration, Aircraft Certification Service, Aircraft Manufacturing Division, Production Certification Branch, AIR–220, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Robert L. Tessier, Federal Aviation Administration, Aircraft Manufacturing Division, Production Certification Branch, AIR–220, room 333, 800 Independence Avenue, SW., Washington, DC 20591, phone (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 21–PTC provides information and guidance concerning the control of parts proposed to be shipped by manufacturers with an approved production inspection system or production certificate in advance of type certification of a new aircraft, aircraft engine, or propeller.

Comments Invited

Interested persons are invited to comment on the proposed AC 21–PTC listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21–PTC may be examined, before and after the comment closing date in room 333, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m. on weekdays, except Federal holidays.

Ronald T. Wojnar,

Manager, Aircraft Manufacturing Division.

[FR Doc. 91–26235 Filed 10–30–91; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement, Providence, RI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Providence, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Gordon G. Hoxie, Division Administrator, Federal Highway Administration, 380 Westminister Mall, room 547, Providence, Rhode Island 02903, telephone (401) 528–4541.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Rhode Island Department of Transportation (RIDOT), will prepare an environmental impact statement (EIS) on a proposal to improve Interstate Route 95 (I–195) in the City of Providence, Rhode Island. The proposed improvement would include the reconstruction or relocation of the existing I–195 between Interstate Route 95 (I–95) and the west side of Washington Bridge, a distance of about 1.5 miles.

Improvements to the roadway and bridge across the Providence River are considered necessary to improve safety and to provide for the existing and projected traffic demand. Alternatives under consideration include (1) taking no action, (2) Using alternate travel modes; (3) widening the existing six-lane highway to eight lanes; and (4) constructing a new eight-lane highway and bridge south of the Providence Hurricane Barrier, including a new interchange with I–95, associated improvements to I–95, and new ramps for local access. Incorporated into and studied with the various build alternatives will be designed variations of grade and alignment.

A brochure describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal.

A series of public meetings will be held in the Providence, Rhode Island area during the EIS process. In addition, a public hearing will be held at the completion of the draft EIS. Public notice will be given of the time and place of the meetings and hearings. The draft EIS will be available for public and agency review and comment prior to the public hearing. Scoping meeting(s) will be held between December 1991 and January 1992. Public notice will be issued regarding the time and place of the scoping meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and other activities apply to this program.)

Issued on: October 23, 1991.

Gordon G. Hoxie,

Division Administrator Providence, Rhode Island.

[FR Doc. 91–26257 Filed 10–30–91; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Quarterly Meeting on NHTSA's Rulemaking, Research and Enforcement Programs

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The Agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on December 4, 1991, beginning at 10:15 a.m. and ending at approximately 1 p.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by November 25, 1991, to the address shown below. If sufficient time is available, questions received after the November 25 date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by November 25, 1991, and the issues to be discussed will be mailed to interested persons by November 28, 1991, and will be available at the meeting.

ADDRESSES: Questions for the December 4, meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, room 5401, 400 Seventh Street, SW., Washington, DC 20590. The meeting will be held in room 2230, Department of Transportation Headquarters Building, 400 7th Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on December 4, 1991. The meeting will be held in room 2230, Department of Transportation Headquarters Building, 400 7th Street, SW., Washington, DC. The purpose of the meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at twenty five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, room 5108, 400 Seventh Street, SW., Washington, DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

Issued: October 25, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-26226 Filed 10-30-91; 8:45 am]

BILLING CODE 4910-59-M

Office of Commercial Space Transportation

[Notice 91-18]

Commercial Space Transportation: User Fees

AGENCY: Office of the Secretary, Office of Commercial Space Transportation, DOT.

ACTION: Notice: Instructions for payment of user fees.

SUMMARY: This Notice sets forth instruction for the payment of user fees established by the Department of Transportation for certain activities involved in reviewing a license application and issuing and administering a license authorizing the conduct of commercial space launch activities under the Commercial Space Launch Act of 1984, as amended. The instructions are intended to facilitate payment and collection of user fees, thereby ensuring that review of license applications and conduct of licensed launch activities are not delayed due to insufficient or misdirected fees payments.

FOR FURTHER INFORMATION CONTACT: Phil Brinkman, Licensing Programs Division, Office of Commercial Space Transportation, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2929.

SUPPLEMENTARY INFORMATION: On August 19, 1991, the Office of Commercial Space Transportation (OCST) published in the **Federal Register** a final rule amending the Commercial Space Transportation Licensing Regulations (the regulations) to require license applicants and launch licensees to pay user fees (56 FR 41062-41068). This action was taken pursuant to the Independent Office Appropriations Act of 1952, as amended, 31 U.S.C. 9701, which authorizes the Department to prescribe regulations for establishing charges or fees for services provided to any person (other than U.S. Government personnel on official business) in carrying out the Department's responsibilities under the Commercial Space Launch Act of 1984, as amended, 49 U.S.C. app. 2601-2623 (the Act). The final rule became effective September 18, 1991.

Under the amendments to the regulations, all license applications must be accompanied by a fixed $2,500 license application fee, and licensees must pay an annual $2,500 license renewal fee, if applicable, and a launch fee. The launch fee for a suborbital launch is $1,000. The launch fee for an orbital launch is based upon the maximum payload lift capability of the launch vehicle, as determined in accordance with parameters provided in the regulations, multiplied by a factor of $2.50 per pound. All fees are non-refundable except that a license application fee will be returned to the applicant if the application is not accepted by OCST.

The regulations, as amended, require payment by certified check or wire transfer, payable to the Department, OCST. The following schedule of fees and specific instructions are provided to assist persons subject to payment of user fees in fulfilling their responsibilities under the regulations and to achieve compliance.

Adherence to these payment procedures will avoid delays in the processing of license applications by OCST due to unpaid fees or misdirected payments, and will facilitate OCST's efforts to provide services to license applicants and licensees in implementing its regulatory responsibilities.

License Application and Renewal Fees

1. Application Fees

The fee for each application for a license to conduct commercial space launch activities is $2,500. This fee must be paid in full upon submission of an application for a license. A license application is not complete until the $2,500 fee is paid. OCST will not initiate its review of a license application until the fee is paid.

The $2,500 license application fee is also required for applications to OCST to transfer a license issued under the Act.

OCST encourages dialogue and consultation prior to submission of a license application. No fee is charged for these consultations. In addition, a prospective applicant may request an approval or determination required under the regulations, such as safety approval or mission approval, before submitting its license application. No fee is required for these pre-licensing approvals.

Payment of a separate $2,500 application fee is required for each individual license application submitted. Payment is required regardless of OCST's action on the application or the success of the mission.

2. Renewal Fees

Each license issued by OCST under the regulations must be renewed annually if the authorized activities have not been completed within 12 months of the date of issuance or will continue beyond 12 months from the date of issuance. A license renewal fee of $2,500 is required to renew a license, on or before the anniversary date of issuance. OCST will notify licensees 30 days before the anniversary date of license issuance that the renewal fee is due by that date. This notice is provided as a courtesy only. Licensees remain responsible for ensuring that the renewal fee is submitted on a timely basis and are not relieved of this obligation in the event they do not receive notification from OCST. The fee is nonrefundable and must be paid in full regardless of the duration of the renewed license.

Timeliness of Payment; Schedule of Launch Fees

A holder of a launch license must pay a launch fee for each launch carried out under such license not later than 30 days after the launch takes place. To the extent possible, OCST will provide the licensee with advance notice of the amount of required launch fee. If the launch fee has been determined, OCST will provide such notice upon issuance of the launch license. In addition, OCST will issue a reminder notice five days after the launch takes place, as a courtesy to licensees. Licensees are responsible for timely payment of the

launch fee, and are not excused from this obligation in the event they do not receive notification from OCST. Annual interest plus an annual penalty charge and administrative costs will be charged for overdue fees in accordance with 31 U.S.C. 3717.

The launch fee is nonrefundable and must be paid regardless of the success of the mission.

The launch fee for a suborbital launch is a fixed $1,000 fee.

The launch fee for an orbital launch is calculated based upon the maximum payload lift capability of the launch vehicle to a nominal 150 nautical mile circular earth orbit with a 28.5 degree inclination, when launched from the Eastern Space and Missile Center, Florida. The launch fee for an orbital launch is $2.50 per pound of maximum payload lift capability.

Using this formula, OCST has calculated the launch fee for certain launch vehicles based upon publicly available published data, as referenced in the Department's "Regulatory Evaluation of User Fees," which is part of the docket supporting the user fee rulemaking. (56 FR 8301, at 8304) The following table sets forth the user fee applicable to a launch of those vehicles:

ORBITAL LAUNCH FEES

Vehicle	Maximum payload lift capability (in pounds)	Launch fee
Delta 6920/6925	8,530	21,325
Delta 7920/7925	10,830	27,075
Atlas I	12,320	30,800
Atlas II	13,820	34,550
Atlas IIA	14,750	36,875
Atlas IIAS	18,180	45,450
Titan III	28,800	72,000

Currently, OCST does not have sufficient information to calculate the launch fee for launch vehicles still under development. OCST will calculate the launch fee applicable to those vehicles when sufficient information is available.

Method of Payment

All user fees shall be paid by certified check or wire transfer only. Certified checks shall be addressed to: U.S. Department of Transportation, Office of Commercial Space Transportation, Licensing Programs Division, S–52, 400 Seventh Street, SW., Washington, DC 20590.

The Department will also accept a wire transfer for payment of fees. For wiring instructions, contact: Administrative Officer, Office of Commercial Space Transportation, (202) 366–2937. Payment by wire transfer must be confirmed in writing to the above address within 48 hours of the wire transfer by the person submitting the payment.

All amounts shall be paid in U.S. dollars.

To ensure that the payment is properly credited, each user fee payment and wire transfer confirmation must state whether the payment is a license application, license renewal, or launch fee. Each payment must clearly identify the licensee's or applicant's name, and the license number and launch date if applicable.

Issued in Washington, DC, October 23, 1991.

Stephanie E. Myers,

Director, Office of Commercial Space Transportation.

[FR Doc. 91–26310 Filed 10–28–91; 3:00 pm]

BILLING CODE 4910–62–M

Office of Hearings

[Docket No. 47676]

U.S.-Brazil Combination Service Case; Notice of Hearing

The hearing in this case will commence at 9:30 a.m. on Thursday, November 7, 1991 and continue for the necessary days thereafter to complete the hearing. The hearing will be held in room 5332, U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The civic parties will present their cases first, commencing with the Atlanta/Georgia parties and proceeding seriatim in alphabetical order. Then the airline applicants shall present their direct cases in alphabetical order, followed by Public Counsel.

If certain parties wish to modify the order of their presentation, and there is good cause for doing so, I may allow that change. However, once a party begins its direct case, I expect that we will complete the direct and cross-examination of that party's witnesses before proceeding with another party's witnesses, unless good cause is shown for the interruption. Accommodating the business schedule of a witness normally does not constitute good cause.

Cross-examination generally shall be limited to fifteen minutes for each witness per aligned parties. Aligned parties should designate one attorney to cross a particular witness, but, if good cause is shown, I may allow more than one attorney per aligned parties to cross-examine. However, aligned parties shall not be allowed to cross-examine each other's witnesses. Further, even as to unaligned parties, neither duplicative nor friendly cross-examination will be permitted.

Final witness lists are due with the submission of the rebuttal exhibits on November 1. The list of witnesses which each party wishes to cross-examine must be submitted by November 5, 1991. If a party, or unaligned parties, would like more than fifteen minutes of cross-examination for any witness, the party shall specify the amount of extra time requested with its submission on November 5. Also on November 5, 1991 the parties should provide my secretary Diane Watkins with the names of those persons attended the hearing on specific days (this is necessitated by government security requirements governing admission to federal buildings).

Any outstanding matters not resolved prior to the hearing will be heard at the outset of the hearing before commencing with the testimony.

Robert L. Barton, Jr.,

Administrative Law Judge

[FR Doc. 91–26311 Filed 10–30–91; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 25, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0012.

Form Number: None.

Type of Review: Extension.

Title: Community Reinvestment Act.

Description: Information is not collected by the Office of Thrift Supervision (OTS). The information is made available by savings associations, and informs the public of the kinds of credit it offers, it community delineation and OTS' evaluation of its performance in meeting the credit needs of its delineated community.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 2,375.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion and Annually.

Estimated Total Reporting Burden: 11,876 hours.

Clearance Officer: John Turner (202) 906-6840, Office of Thrift Supervision, 3rd Floor, 1700 G. Street, NW., Washington, DC 20552.

OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-26258 Filed 10-30-91; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 211
Thursday, October 31, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, November 1, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-26407 Filed 10-29-91; 11:11 am]

BILLING CODE 6351-01-M

FARM CREDIT ADMINISTRATION: Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 1, 1991, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD 703 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. New Business

1. Regulations.
a. Assessment Regulations.

Closed Session *

A. New Business

1. Other Prior Approval.
a. Western Farm Credit Bank's Financial Assistance to Arizona ACA.

Date: October 28, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-26437 Filed 10-29-91; 2:09 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:11 a.m. on Tuesday, October 29, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Matters relating to a certain failed institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision) and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: October 29, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-26464 Filed 10-29-91; 2:33 pm]

BILLING CODE 6714-01-M

* Session closed to the public—exempt pursuant to 5 U.S.C. §§ 552b(c)(8) and (c)(9).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 5, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, November 6, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will be Open to the Public.

ITEMS TO BE DISCUSSED: Gephardt for President Committee—Special Hearing.

DATE AND TIME: Thursday, November 7, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will be Open to the Public.

ITEMS TO BE DISCUSSED:

Title 26 Certification Matters
Advisory Opinion 1991-30: Mr. Frank M. Northam on behalf of Citizens for a Sound Economy, Inc. (continued from meeting of October 24, 1991)
Advisory Opinion 1991-33: Republican Party of Texas and the Texas Democratic Party
Notice of Proposed Rulemaking on Amendments to the Allocation Rules
FY 1992 Management Plan
Status Report on the Presidential Election Campaign Fund
Administrative Matters

PERSON TO CONTACT FOR INFORMATION Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Harris,

Administrative Assistant.

[FR Doc. 91-26468 Filed 10-29-91; 3:11 pm]

BILLING CODE 6715-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Tuesday, November 5, 1991.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Agency Office Space. Closed pursuant to exemptions (2), (4), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board. Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91–26393 Filed 10–29–91; 11:09 am]

BILLING CODE 7535–01–M

Corrections

Federal Register
Vol. 56, No. 211
Thursday, October 31, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588 029]

Final Results of Antidumping Duty Administrative Reviews: Fishnetting of Manmade Fibers From Japan

Correction

In notice document 91-23510 beginning on page 49456 in the issue of Monday, September 30, 1991, make the following corrections:

On page 49457, in the second column, in the table, in the third column, the Margin (percent) for Taito Seiko were incorrectly aligned, "0.75" should appear opposite the Time period 6/1/85-5/31/87 and "1.40" should appear opposite the Time period 6/1/86-5/31/87.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

Correction

In rule document 91-23915 beginning on page 50279 in the issue of Friday, October 4, 1991, make the following correction:

On page 50280, in the 3rd column, in the 22nd line, "10,000 mt" should read "10,100 mt".

BILLING CODE 1505-01-D

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Chapter XVII

[Docket No. RM-90-1]

Rules Implementing the Government in the Sunshine Act

Correction

In rule document 91-5327 beginning on page 9605 in the issue of Thursday, March 7, 1991, make the following correction.

On page 9611, in the first column, in the file line at the end of the document, "FR Doc. 91-5237" should read "FR Doc. 91-5327".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 225

Department of Defense Federal Acquistion Regulation Supplement; Independent Research and Development Costs

Correction

In rule document 91-21979 beginning on page 46520 in the issue of Thursday, September 12, 1991, make the following correction:

225.7304 [Corrected]

On page 46520, in the second column, in section 225.7304(c)(2), in the first line "are allowable" should read "are not allowable".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP91-122-001 and TM91-7-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

Correction

In notice document 91-10981 beginning on page 21483, in the issue of Thursday, May 9, 1991, make the following correction:

On page 21484, in the first column, in the file line at the end of the document, "FR Doc. 91-10891" should read "91-10981".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-030-4210-13]

Exchange of Public Land; Socorro, Catron, and Sierra Counties, New Mexico

Correction

In notice document 91-22285 beginning on page 47100 in the issue of Tuesday, September 17, 1991, make the following correction:

On page 47102, in the first column, in the eighth line above the **DATES:** paragraph, "lots to to 4," should read "lots 1 to 4,".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-174-AD; Amendment 39-8052; AD 91-21-05]

Airworthimess Directives; McDonnell Douglas Model DC-10-10 Series Airplanes

Correction

In rule document 91-24187 beginning on page 50650 in the issue of Tuesday, October 8, 1991, make the following correction:

§ 39.13 [Corrected]

On page 50651, in the second column, in paragraph (a)(2), in the eighth line, "A57-423" should read "A57-123".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY
Internal Revenue Service

26 CFR Part 48

[PS-120-90]

RIN 1545-AP48

Gasoline Excise Tax

Correction

In proposed rule document 91-20171 beginning on page 42287 in the issue of Tuesday, August 27, 1991, make the following corrections:

1. On page 42288, in the 2d column, under *I. Gasoline Distribution System*, in the 1st paragraph, in the 14th line, insert a period after "terminals".

2. On the same page, in the third column, under B. Changes Made ***, in the first paragraph, in the second line, "weaknesses" was misspelled.

3. On page 42289, in the first column, under *III Structure of* ***, in the first paragraph, in the first line, "given" should read "gives".

4. On page 42291, in the third column, under F. Management of Gasoline, in the second line from the end of the paragraph, "Rule." should read "Rul.".

5. On page 42292:

a. In the first column, in the second full paragraph, in the second line from the bottom, the first "gasoline" should read "gasohol".

b. In the second column, in the authority citation for part 48, in the second line, "4028(A)" should read "4028(a)".

c. In the same column, amendment number 3 should read: "3. New § § 48.4081-3 through 48.4081-8 are added."

d. In the same column, in amendment number 4, in the second line, "48.4081-1" should read "48.4084-1".

§ 48.4081-1 [Corrected]

6. On page 42293, in the second column, in § 48.4081-1(h), in the third line, "enterer" should read "entered"; and in paragraph (i)(1), in the first line, insert an open paren before "as".

7. On page 42296, in the third column, in § 48.4081-4, paragraph (d) is a part of the section and not a part of the certificate in paragraph (c)(3).

BILLING CODE 1505-01-D

federal register

Thursday
October 31, 1991

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Parts 294 and 296
Tribal Consultation on Proposed Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 294 and 296

Tribal Consultation on Proposed Regulations

October 25, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation meetings.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct consultation meetings to obtain written and oral comments concerning regulations being proposed to govern the priority ranking process for certain facilities construction projects. The BIA is proposing to add two new parts to title 25 of the Code of Federal Regulations: Part 294 Education Facilities Construction and Part 296 Law Enforcement Facilities Construction. A consultation booklet containing drafts of the proposed text for both parts and the background of the proposed rulemaking actions and significant provisions for discussion is being issued.

DATES: See **SUPPLEMENTARY INFORMATION.**

ADDRESSES: See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Edward Parisian, Director, Office of Indian Education Programs, or Joe Christie, Office of Indian Education Programs, Bureau of Indian Affairs, Mail Stop 3530 MIB, 1849 C Street NW., Washington, DC 20240, telephone number (202) 208–6123; Ted Quasula, Chief, Division of Law Enforcement Services, or Warren LeBeau, Division of Law Enforcement Services, Mail Stop 1342 MIB, Bureau of Indian Affairs, 1849 C Street NW., Washington, DC 20240, telephone number (202) 208–5786; John Trezise, Acting Director, Office of Construction Management, or Kathleen L. Slover, Office of Construction Management, Department of the Interior, Mail Stop 2417 MIB, 1849 C Street NW., Washington, DC 20240, telephone number (202) 208–3403.

SUPPLEMENTARY INFORMATION:

MEETINGS; DATES AND TIMES: Meetings will be held 9 a.m. until 6 p.m. with a break for lunch between 1 p.m. and 2 p.m. at each of the sites listed below on the dates indicated. However, the meetings may end before 6 p.m. if all persons present who wish to make comments or ask questions have had an opportunity to do so. Information concerning the actual meeting places can be obtained by contacting any of the persons named for the location.

December 4, 1991—Oklahoma City, Oklahoma. Local contacts and telephone numbers: Education, Jim Baker, (918) 687–2460.

Anadarko Area Office, Melvin Gibson, Law Enforcement, (405) 247–6673 Ext. 215; Tom Hogland, Facilities, (405) 247–6673.

Muskogee Area, Eddie Fisher, (918) 687–2296; Vernon McCarty, Facilities, (918) 687–2302.

December 4, 1991—Washington, DC. Local contacts and telephone numbers: Education, Lena Sanders, (703) 235–3233.

Eastern Area Office, William W. Lorentino, Law Enforcement, (703) 235–2354; John Clark, Facilities, (703) 235–8610.

December 6, 1991—Phoenix, Arizona. Local contacts and telephone numbers: Education, Beverly Mestes, (602) 562–3557; Fayetta Babby, (916) 978–4680.

Phoenix Area Office, Richard Lafountain, Law Enforcement, (602) 379–6958; Charlie Tate, Facilities, (602) 379–6755.

December 6, 1991—Minneapolis, Minnesota. Local contacts and telephone numbers: Education, Betty Walker, (612) 373–1090.

Minneapolis Area Office, Area Special Officer, Law Enforcement, (612) 373–1184; Doug Johnson, Facilities, (612) 373–1061.

December 9, 1991—Albuquerque, New Mexico. Local contacts and telephone numbers: Education, Val Cordova, (505) 766–3034.

Albuquerque Area Office, Frank Adakai, Law Enforcement, (505) 766–3918; Nolan Pagett, Facilities, (505) 766–3177,

December 10, 1991—Spokane, Washington. Local contacts and telephone numbers: Education, Marlin Reimer, (503) 230–5682; Larry Parker, (406) 657–6375.

Portland Area Office, Ed Naranjo, Law Enforcement, (503) 231–6754; Charlie Davison, Facilities, (503) 231–6794.

Billings Area, Walter J. Main, Law Enforcement, (406) 657–6485; Ron Klem, Facilities, (406) 657–6307.

December 11, 1991—Gallup, New Mexico. Local contacts and telephone numbers: Education, Larry Holman, (505) 786–6150.

Navajo Area Office, Tom Tippeconic, (505) 863–9501 Ext. 314.

December 12, 1991—Aberdeen, South Dakota. Local contacts and telephone numbers: Education, Jim Davis, (701) 477–6471.

Aberdeen Area Office, Dwain O. Holland, Law Enforcement, (605) 226–7347; Ron De Jong, Facilities, (605) 226–7446.

Written comments concerning the consultation hearings must be received no later than December 20, 1991, in the Office of Construction Management, Department of the Interior, Mail Stop 2417 MIB, 1849 C Street NW., Washington, DC 20240, Attention: Director, Office of Construction Management.

Background Information

Priority ranking for funding consideration for Education Facilities Construction is currently handled in accordance with guidelines originally published in the **Federal Register** on Tuesday, May 22, 1979, at 44 FR 29864. The guidelines were incorporated into what has more recently been referred to as "Instructions and Application for New School Construction" dated November 1987. The current process results in the annual publication of a priority ranking list in the **Federal Register.**

Proposed part 294 Education Facilities Construction would replace that process with regulations providing for a multi-year priority ranking process. Consultation on part 294 is in compliance with 25 U.S.C. 2010(b), which requires the BIA to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential changes or issues being considered by the BIA regarding Indian education programs.

Priority ranking lists for Adult Detention Centers and Juvenile Detention Centers have previously been published. However, applications for priority ranking were solicited by publication of notices in the **Federal Register** or by letter. Neither procedures nor criteria for priority ranking have been published.

Proposed part 296 Law Enforcement Facilities Construction would replace the current process being followed with a combined law enforcement facilities multi-year ranking process.

The rules being proposed for parts 294 and 296 will contain the requirements for applying for a project, including the deadline for filing applications; the procedures to be followed; and the criteria for ranking projects for funding consideration.

A consultation booklet for the scheduled meetings is being distributed to Federally recognized Indian tribes and Bureau-funded schools. The booklets will also be available from local contact persons and at each meeting.

David J. Matheson,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 91-26193 Filed 10-30-91; 8:45 am]

BILLING CODE 4310-02-M

federal register

Thursday
October 31, 1991

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 90 et al.

Technical Rule to Phase out HAP and CHAP and to Phase in CHAS; Adding CHAS to Existing Regulations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 90, 91, 570, 576, 577, 578, 579, and 882

[Docket No. R-91-1553; FR-2970-F-01]

RIN 2501-AB21

Technical Rule to Phase Out HAP and CHAP and to Phase In CHAS; Adding CHAS to Existing Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: An interim rule published in the **Federal Register** on February 4, 1991 (56 FR 4480) to establish the Comprehensive Housing Affordability Strategy (CHAS) as the new planning process to be used by States and localities in connection with Community Planning and Development programs and McKinney Act programs. The preamble to that interim CHAS rule indicated that a followup rule would be published to amend existing program regulations affected by that rule. This rule is the promised technical rule that replaces references to the Housing Assistance Plan (HAP) and the Comprehensive Homeless Assistance Plan (CHAP) with references to the CHAS. In addition, in response to public comment and concern about impact on current year funding, this rule reduces the minimum time period for public comment on an abbreviated CHAS from 60 days, which was the time specified in the interim rule for citizen participation generally, to 30 days.

EFFECTIVE DATE: December 2, 1991.

FOR FURTHER INFORMATION CONTACT: With respect to the Community Development Block Grant Programs: James Broughman with respect to entitlement communities, telephone (202) 708–1577, or Richard Kennedy with respect to States, Indian Tribes, Insular Areas, and HUD-administered small cities, telephone (202) 708–1322. With respect to Homeless Programs, James Forsberg, telephone (202) 708–4300. These are not toll-free telephone numbers. All of these officials are located at 451 Seventh Street, SW., Washington, DC 20410, and they may be reached by TDD for the hearing-impaired at (202) 708–2565.

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collections associated with the CHAS were reviewed by the Office of Management and Budget and assigned approval number 2506–0117 (expiring January 31, 1992) in connection with publication of the interim rule establishing the CHAS requirements. The substitution of appropriate cross-references to the CHAS has no impact on the information collection burden.

II. Background

Since Fiscal Year 1975, the Department has required the preparation of a local housing planning document as a condition to receipt of certain types of funding to local governments. First, a Housing Assistance Plan (HAP) was required under the Community Development Block Grant Entitlement Program (and used by HUD in awarding assistance under a number of assisted housing programs). Then, when the Stewart B. McKinney Homeless Assistance Act was enacted, a Comprehensive Homeless Assistance Plan (CHAP) was required as a condition of approval of funding for a locality's program to provide shelter for homeless persons. Now the Cranston-Gonzalez National Affordable Housing Act (NAHA or the Act), Public Law 101–625, approved November 28, 1990, has created a new planning document for use by States as well as units of general local government—the Comprehensive Housing Affordability Strategy (CHAS or housing strategy). This CHAS incorporates useful elements of the HAP and CHAP, and, by the effective date stated above, it will replace both of them. Inclusion of all housing related elements in a single planning document will reduce the overall burden, and the resulting document will be a more useful tool for addressing housing needs.

In the CHAS, a State or local government will estimate the housing assistance needs of its very low-income, low-income, and moderate income families, including the needs of homeless individuals and families, and will assess the availability of unassisted housing, assisted housing, and other resources for addressing these needs. On the basis of this information, the jurisdiction will develop a strategy for meeting these housing assistance needs over the next five years. Each year, the jurisdiction will decide how the available resources will be used to provide affordable housing for needy families.

The Act requires that, in order to receive funding directly from HUD under certain programs, a State or unit of general local government must have a Comprehensive Housing Affordability Strategy that has been approved by HUD for a fiscal year. In addition, for certain other programs, the Act requires that an application include a certification of consistency of the proposal with an approved housing strategy for the jurisdiction in which the proposed project will be located.

The Section 8 Certificate and Voucher Programs refer to the housing strategy in connection with a basis for determination of exception rents (section 543(b)) and allocation of funding (section 556), but do not require a certification of consistency with the housing strategy. However, as a homeless assistance program, the Section 8 Moderate Rehabilitation Single Room Occupancy program does require a certification of consistency with the CHAS (section 441, McKinney Act). This rule contains an amendment to reflect the change from HAP to CHAS with respect to that certification.

III. Transition

The requirements for performance reports under §§ 570.507 and 570.903 (HAP compliance) and under § 576.85 (use of Emergency Shelter Grants) remain unchanged at this time, to permit evaluation of grantee performance under Fiscal Year 1991 requirements. After the HAP is replaced and performance under the CHAS can be measured, the regulation will be changed. The ESG performance report also may be changed at that point.

IV. Rule Changes

The regulation governing the Comprehensive Homeless Assistance Plan, part 90, is amended to acknowledge that the CHAP is superseded by the CHAS on October 1, 1991.

The provision of the interim CHAS rule governing the abbreviated CHAS, which is submitted by jurisdictions that do not expect to participate in the HOME program and are not entitlement grantees under the CDBG program but who have a particular HUD program in which they are seeking funds, is amended to make the time period for development more workable. This change is being made in response to public comment and because the Department believes it is necessary to assure adequate participation in some of the programs for which funding rounds will begin in the next few months.

Of the 36 public comments received on the interim rule, 15 criticized the requirement of § 91.40(b) that citizens of a jurisdiction be given at least 60 days to examine and comment on the draft CHAS as too lengthy. They called for a reduction to 30 days, which they deemed both reasonable and adequate to obtain the views of citizens, public agencies,

and other interested parties. No commenters endorsed the 60 day period.

Funding of many housing assistance programs is contingent upon the existence of an approved housing strategy. If a jurisdiction starts to prepare an abbreviated strategy in connection with an application prepared in response to a notice of funding availability that provides for a 60-day application period, the 60-day citizen participation period required for the CHAS under the interim rule might prevent the applicant from completing a timely application.

The reduction in the citizen participation period is being made in this rule only with respect to the abbreviated strategy, by way of an amendment to § 91.25. This amendment to § 91.25 is subject to additional change when the Department issues a final rule responding to public comments received on all aspects of the interim CHAS rule (published on February 4, 1991).

Many of the changes throughout parts 570, 576, 577, 578, 579 and 882 are simply the substitution of the term "comprehensive housing affordability strategy" for "housing assistance plan" or "comprehensive homeless assistance plan". Cross references to the new part 91, which gives the specific requirements of a CHAS, are added, where appropriate.

A definition of Comprehensive Housing Affordability Strategy, as the document prepared and submitted to HUD in accordance with part 91, is added to the definitions in § 570.3. When adding this definition, the paragraph designations for the alphabetically listed definitions are removed, to simplify cross-references. However, this change necessitates revision of three of the existing definitions to properly subdivide their content into subparagraphs. In addition, this elimination of the paragraph designations for the definitions requires amendment of a number of other sections that had referred to definitions in § 570.3 by a lettered paragraph designation.

The lengthy section (§ 570.306) devoted to describing the contents of the Housing Assistance Plan and reviews under the HAP is replaced with a much shorter section that cross-references Part 91 for the content of the CHAS, which emphasizes that performance under the CHAS is an important factor in performance reviews under the CDBG Program. Several sections are modified to indicate that, for Fiscal Year 1992 and afterwards, if any housing activities are to be undertaken, the applicant must certify that they are consistent with an approved CHAS.

Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since it substitutes a new planning document for two other ones. This substitution is required by law. The law and the regulation on which this technical rule is based permit the submission of an abbreviated housing strategy, under appropriate circumstances.

Regulatory Agenda

This rule was listed as item 1240 under the Office of the Secretary in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17375) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule is a technical rule making changes in program rules to conform them to the previously published interim rule establishing the CHAS. As such, this rule does not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government beyond the effects analyzed in a Federalism Assessment performed in connection with the CHAS interim rule (FR–2932, Docket No. R–91–1507). That assessment is available for inspection at the Office of the Rules Docket Clerk at the address listed above for inspection of the Finding of No Significant Impact.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Justification for a Final Rule

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own rule on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." 24 CFR 10.1.

The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is impracticable and contrary to the public interest. To a large extent, the rule is a housekeeping matter, eliminating references to planning documents that have become outmoded because of the issuance of another rule for effect that substitutes a new planning document. The only substantive change to the already published interim CHAS rule is being made at this time in response to public comments and because change is urgently needed to permit proper competition for program funds in this fiscal year.

List of Subjects

24 CFR Part 90

Community facilities, Grant programs—housing and community development, emergency shelter grants, Reporting and recordkeeping requirements, Grant programs—social programs, Homeless.

24 CFR Part 91

Grant programs—housing and community development.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—housing and community development, Grant programs—education, Guam, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust territory, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands, Student aid.

24 CFR Part 576

Community facilities, Grant programs—housing and community development, Emergency shelter grants, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 577

Grant programs—housing and community development, Homeless, Community facilities, Employment, Grant programs—social programs, Handicapped, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 578

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Handicapped, Homeless, Reporting and recordkeeping requirements, Mental health programs, Nonprofit organizations, Technical assistance.

24 CFR Part 579

Grant programs—housing and community development, Homeless, Reporting and recordkeeping requirements, Community facilities, Grant programs—social programs.

24 CFR Part 882

Grant programs—housing and community development, Lead poisoning, Manufactured homes, Homeless, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 90, 570, 576, 577, 578, 579, and 882 are amended to read as follows:

PART 90—COMPREHENSIVE HOMELESS ASSISTANCE PLANS

1. The authority citation for part 90 continues to read as follows:

Authority: Sec. 485, Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 11301 note); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 90.1, paragraph (a) is revised to read as follows:

§ 90.1 Scope and applicability.

(a) This part establishes the requirements for the Comprehensive Homeless Assistance Plan (CHAP), as authorized by subtitle A of title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361), which remain in effect until October 1, 1991. On that date, the CHAP is superseded by the Comprehensive Housing Affordability Strategy (CHAS), authorized by title I of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, 104 Stat. 4079). The CHAS includes consideration of a jurisdiction's approach to assisting homeless persons. See 24 CFR part 91 and applicable program regulations in chapter V of title 24 of the Code of Federal Regulations for the rules pertaining to the CHAS.

* * * * *

PART 91—STATE AND LOCAL HOUSING AFFORDABILITY STRATEGIES

3. The authority citation for part 91 continues to read as follows:

Authority: Secs. 101–108, Cranston-Gonzalez National Affordable Housing Act, Pub. L. 101–625, 104 Stat. 4079 (42 U.S.C. 12701–12708); 42 U.S.C. 3535(d).

4. Section 91.25, is amended by adding a paragraph designation (a) to the undesignated text, and by adding a new paragraph (b) to read as follows:

§ 91.25 Abbreviated strategy.

* * * * *

(b) Notwithstanding the provision of § 91.40 concerning the length of time deemed to be a reasonable period for citizen participation, the period required for this process with respect to an abbreviated strategy must be at least 30 days.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

5. The authority citation for part 570 is revised to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5300–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 570.1 [Amended]

6. In § 570.1, paragraph (b) is amended by removing the paragraph designation following the term "§ 570.3".

7. In § 570.3, all the alphabetical paragraph designations are removed, a new definition of "comprehensive housing affordability strategy" is added in appropriate alphabetical order, and the definitions of "City", "Metropolitan City", and "Urban County" are revised to read as follows:

§ 570.3 [Amended]

* * * * *

City means the following:

(1) For purposes of Entitlement community Development Block Grant and Urban Development Action Grant eligibility:

(i) Any unit of general local government that is classified as a municipality by the United States Bureau of the Census, or

(ii) Any other unit of general local government that is a town or township and that, in the determination of the Secretary:

(A) Possesses powers and performs functions comparable to those associated with municipalities;

(B) Is closely settled (except that the Secretary may reduce or waive this requirement on a case by case basis for the purposes of the Action Grant program); and

(C) Contains within its boundaries no incorporated places as defined by the United States Bureau of the Census that have not entered into cooperation agreements with the town or township for a period covering at least 3 years to undertake or assist in the undertaking of essential community development and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the United States Bureau of the Census and information provided by the town or township and its included units of general local government.

(2) For purposes of Urban Development Action Grant eligibility only, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the counties of Kauai, Maui, and Hawaii in the State of Hawaii, and Indian tribes that are eligible recipients under the State and Local Government Fiscal Assistance Act of 1972 and located on reservations in Oklahoma as determined by the Secretary of the Interior or in Alaskan Native Villages.

* * * * *

Comprehensive Housing Affordability Strategy (CHAS or housing strategy) means the housing strategy prepared by a jurisdiction and approved by HUD in accordance with 24 CFR part 91.

* * * * *

Metropolitan city (1) Means a city within a metropolitan area that is the central city of the area, as defined and used by the Office of Management and Budget, or any other city, within a metropolitan area, that has a population of fifty thousand or more.

(2) However, any unit of general local government that becomes eligible to be classified as a metropolitan city, and was not classified as a metropolitan city in the immediately preceding fiscal year, may, upon submission of written notification to the Secretary, defer its classification as a metropolitan city for all purposes under the Act, if it elects to have its population included in an urban county.

(3) Any city classified as a metropolitan city pursuant to paragraph (1) of this definition and that no longer qualifies under that paragraph in a fiscal year beginning after fiscal year 1989, shall retain its classification as a metropolitan city for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year the amount of the grant to such city shall be 50 percent of the amount calculated under section 106(b) of the Act; and the remaining 50 percent shall be added to the amount allocated under section 106(d) of the Act to the State in which the city is located, and the city shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 106(d) of the Act.

* * * * *

Urban county (1) means any county within a metropolitan area which—

(i) Is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, that are not units of general local government; and

(ii) Has a population of 200,000 or more (excluding the population of metropolitan cities therein) and has a combined population of 100,000 or more (excluding the population of metropolitan cities therein) in such unincorporated areas and in its included units of general local government (and in the case of counties having a combined population of less than 200,000, the areas and units of general local government must include the areas and units of general local government which in the aggregate have the preponderance of the persons of low and moderate income who reside in the county excluding metropolitan cities therein) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded, or with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities.

(2) Also includes any other county eligible under section 102(a)(6) of the Act.

(3) Continues to include any county classified as an urban county pursuant to paragraph (1) or (2) of this definition, and that no longer qualifies as an urban county under those paragraphs in a fiscal year beginning after fiscal year 1989. Any such county shall retain its classification as an urban county for that fiscal year and the succeeding fiscal year, except that in the succeeding fiscal year the amount of the grant to such an urban county shall be 50 percent of the amount calculated under section 106(b) of the Act; and the remaining 50 percent shall be added to the amount allocated under section 106(d) of the Act to the State in which the urban county is located, and the urban county shall be eligible in the succeeding fiscal year to receive a distribution from the State allocation under section 106(d) of the Act.

(4) Is determined by the Department on the basis of whether the county's combined population contains the required percentage of low and moderate income persons by identifying the number of persons that resided in applicable areas and units of general local government based on data from the most recent decennial census, and using income limits that would have applied for the year in which that census was taken.

* * * * *

§ 570.205 [Amended]

8. In § 570.205, paragraph (a)(3)(i) is amended by removing the phrase, "housing assistance plan", and substituting in its place the phrase, "Comprehensive Housing Affordability Strategy".

§ 570.301 [Amended]

9. In § 570.301, paragraph (b)(1)(iv) is amended by removing the phrase, "Housing Assistance Plan", and substituting in its place the phrase, "Comprehensive Housing Affordability Strategy"; and paragraph (d) is amended by removing the phrase "Housing Assistance Plan", and substituting in its place the phrase, "Comprehensive Housing Affordability Strategy" and by inserting before the period at the end of the sentence the phrase, "and part 91".

§ 570.303 [Amended]

10. In § 570.303, paragraph (f) is amended by removing the paragraph designation following the term "§ 570.3". Paragraph (l) is amended by removing the phrase, "housing assistance plan", and substituting in its place the phrase, "Comprehensive Housing Affordability Strategy"; and by inserting before the period at the end of the sentence the phrase, "and part 91, and that any housing activities to be assisted with CDBG funds will be consistent with the Comprehensive Housing Affordability Strategy."

§ 570.304 [Amended]

11. In § 570.304, paragraph (a)(3) is amended by removing the phrase, "housing assistance plan", and substituting in its place the phrase, "Comprehensive Housing Affordability Strategy".

12. Section 570.306 is revised to read as follows:

§ 570.306 Comprehensive housing affordability strategy.

(a) *General.* The requirements for preparing and submitting a Comprehensive Housing Affordability Strategy (CHAS or housing strategy) are specified in 24 CFR part 91.

(b) *Grantee's responsibility.* Each grantee is responsible for implementing its approved CHAS.

(c) *Newly entitled communities.* Any newly entitled community that was not made aware of its CDBG entitlement status by HUD August 31 shall be considered unable to comply with the deadline for submission of its CHAS and will be permitted to submit an abbreviated CHAS, in accordance with instructions from HUD.

§ 570.307 [Amended]

13. In § 570.307, paragraphs (b) and (d) are amended by removing the paragraph designations following the term "§ 570.3" and by adding in their place the paragraph designation "(3)".

§ 570.403 [Amended]

14. In § 570.403, paragraphs (b)(1)(i) and (e)(3)(i)(C) are amended by removing the paragraph designations following the term "§ 570.3".

§ 570.410 [Amended]

15. In § 570.410, paragraph (b) is amended by removing the paragraph designations following the term "§ 570.3".

§ 570.423 [Amended]

16. In § 570.423, paragraph (c)(2)(ii) is amended by removing the term "HAP" in the three places where it occurs, and

substituting in its place the term "CHAS".

§ 570.426 [Amended]

17. In § 570.426, paragraph (c)(1) is amended by adding the following language at the end: "For Federal Fiscal Year 1992 and thereafter, if the application contains any housing activities, the applicant shall certify that the proposed housing activities are consistent with its Comprehensive Housing Affordability Strategy."

§ 570.430 [Amended]

18. In § 570.430, paragraph (c)(1) is amended by adding the following language at the end: "For Federal Fiscal Year 1992 and thereafter, if the application contains any housing activities, the applicant shall certify that the proposed housing activities are consistent with its Comprehensive Housing Affordability Strategy."

§ 570.451 [Amended]

19. In § 570.451, paragraph (a) is amended by removing the paragraph designation following the term "§ 570.3".

§ 570.456 [Amended]

20. In § 570.456, paragraph (c)(5)(ii) is amended by removing the paragraph designation following the term "§ 570.3".

21. In § 570.490, paragraph (b) is amended by removing the undesignated paragraph following paragraph (b)(3), and by adding a new paragraph (b)(4) following paragraph (b)(3), to read as follows:

§ 570.490 Submission requirements.

* * * * *

(b) * * *

(4) For Federal Fiscal year 1992 and thereafter, a certification required by part 91 of this title that the State's method of distribution with respect to housing activities is consistent with the State's HUD-approved Comprehensive Housing Affordability Strategy.

* * * * *

22. In § 570.509, paragraph (d) is revised to read as follows:

§ 570.509 Grant closeout procedures.

* * * * *

(d) *Status of comprehensive housing affordability strategy after closeout.* Unless otherwise provided in a closeout agreement, the Comprehensive Housing Affordability Strategy (CHAS) will remain in effect after closeout until the expiration of the fiscal year covered by the last approved CHAS.

* * * * *

§ 570.606 [Amended]

23. In § 570.606, paragraphs (c)(1)(iii)(G), (c)(1)(iv)(A), and (c)(3)(iv) are amended by removing the phrase "Housing Assistance Plan", and substituting in its place the phrase, "Comprehensive Housing Affordability Strategy". In paragraph (c)(3)(iv) of this paragraph, the final sentence is removed.

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

24. The authority citation for part 576 is revised to read as follows:

Authority: Sec. 416, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11376); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 576.3 [Amended]

25. In § 576.3, the definition for "Comprehensive Homeless Assistance Plan" is removed, and the following definition for "Comprehensive Housing Affordability Strategy" is inserted in its place:

* * * * *

Comprehensive Housing Affordability Strategy (CHAS or housing strategy). The housing strategy prepared by a jurisdiction and submitted to HUD in accordance with 24 CFR part 91.

* * * * *

26. The heading for subpart C, located above § 576.31, is revised to read as follows:

Subpart C—Comprehensive Housing Affordability Strategy

27. Section 576.31 is revised to read as follows:

§ 576.31 Comprehensive housing affordability strategy.

(a) *Certifications.* Assistance may not be made available under this part unless the applicant has submitted a certification that the proposed activities are consistent with a Comprehensive Housing Affordability Strategy (CHAS) and, in the case of a jurisdiction, it has submitted a certification that it is following a HUD-approved CHAS.

(1) *Jurisdictions.* Grants for which these certifications must be submitted, by the public official responsible for submitting the CHAS, are the following:

(i) For States, allocations under § 576.43 and reallocations under §§ 576.61, 576.63, and 576.67;

(ii) For formula cities and counties, allocations under § 576.43 and reallocations under §§ 576.63 and 576.67; and

(iii) For Territories, allocations under § 576.45 and reallocations under §§ 576.63 and 576.67.

(2) *Nonprofit organizations.* If the proposed activities are to serve a formula city or county or Territory, the city, county, or Territory must certify that the activities are consistent with its CHAS; if the proposed activities are not to serve such city or county, the lowest level of government that has a CHAS in which the project is located must certify compliance with its CHAS.

(b) *Reallocations.* (1) Reallocation amounts may be made available under § 576.67 to units of general local government that are not formula cities and counties only if the unit of general local government has a CHAS.

(2) Sections 576.61 and 576.63 govern the reallocation of grant amounts initially allocated to a State or a formula city or county under § 576.43, or to a Territory under § 576.45, if the jurisdiction does not obtain approval of its housing strategy within the time periods specified in those sections.

§ 576.51 [Amended]

28. In § 576.51, paragraph (b)(2)(i) is amended by removing the term "Comprehensive Plan" and substituting in its place the term "Comprehensive Housing Affordability Strategy"; by removing the term "Plan" and substituting in its place the term "housing strategy"; and by removing the term "CHAP" in the two places that it is used and substituting in its place the term "housing strategy". In paragraphs (d)(1) and (d)(3), the term "Homeless Assistance Plan" is removed in the two places where it occurs, and the term "Housing Affordability Strategy" is substituted in its place; the term "Plans" is removed and the term "housing strategies" is substituted in its place; and the term "Plan" is removed in the one place where it occurs, and the term "housing strategy" is substituted in its place. In paragraph (d)(3), the reference to "§ 576.31(b)" is removed and a reference to "24 CFR part 91" is added in its place.

29. In § 576.61, the heading and paragraph (a) are revised to read as follows:

§ 576.61 Reallocation of grant amounts; lack of approved Comprehensive Housing Affordability Strategy; formula cities and counties.

(a) *Applicability.* This section applies where a formula city or county fails to obtain approval of its Comprehensive Housing Affordability Strategy within 90 days of the date upon which amounts under this part first become available for allocation under § 576.43 in any fiscal year.

* * * * *

30. In § 576.63, the heading and paragraph (a)(1) are revised to read as follows:

§ 576.63 Reallocation of grant amounts; lack of approved Comprehensive Housing Affordability Strategy; States and Territories.

(a) *Applicability.* This section applies where:

(1) A State or Territory fails to obtain approval of its Comprehensive Housing Affordability Strategy within 90 days of the date upon which amounts under this part first become available for allocation in any fiscal year; or

* * * * *

PART 577—TRANSITIONAL HOUSING

31. The authority citation for part 577 continues to read as follows:

Authority: Sec. 426, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 577.5 [Amended]

32. In § 577.5, the definition for "Comprehensive Homeless Assistance Plan" is removed, and the following definition for "Comprehensive Housing Affordability Strategy" is inserted in its place:

* * * * *

Comprehensive Housing Affordability Strategy (CHAS or housing strategy). The housing strategy prepared by a jurisdiction and submitted to HUD in accordance with 24 CFR part 91.

* * * * *

33. The heading for subpart C, located above § 577.150, is revised to read as follows:

Subpart C—Comprehensive Housing Affordability Strategy

34. Section 577.150 is revised to read as follows:

§ 577.150 Comprehensive housing affordability strategy.

(a) *Certifications.* Assistance may not be made available under this part unless the applicant has submitted a certification that the proposed activities are consistent with a Comprehensive Housing Affordability Strategy (CHAS) and, in the case of a jurisdiction, it has submitted a certification that it is following a HUD-approved CHAS.

(b) *Applicable CHAS for a jurisdiction.* The certification of consistency for a State, metropolitan city, urban county, or other government entity must be submitted by the public official responsible for submitting the CHAS.

(c) *Applicable CHAS for a private nonprofit organization.* The certification of consistency for a private nonprofit organization must indicate consistency with the CHAS of the lowest level of government in which the project is located that has a CHAS and the certification must be made by the public official responsible for submitting that CHAS.

§ 577.210 [Amended]

35. In § 577.210, paragraph (b)(7) is amended by removing the term "Homeless Assistance Plan" and substituting in its place the term "Housing Affordability Strategy"; and by removing the term "Plan" and substituting in its place the term "housing strategy".

PART 578—PERMANENT HOUSING FOR HANDICAPPED HOMELESS PERSONS

36. The authority citation for part 578 continues to read as follows:

Authority: Sec. 426, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 578.5 [Amended]

37. In § 578.5, the definition for "Comprehensive Homeless Assistance Plan" is removed, and the following definition for "Comprehensive Housing Affordability Strategy" is inserted in its place:

* * * * *

Comprehensive Housing Affordability Strategy (CHAS or housing strategy). The housing strategy prepared by a jurisdiction and submitted to HUD in accordance with 24 CFR part 91.

* * * * *

38. The heading for subpart C, located above § 578.150, is revised to read as follows:

Subpart C—Comprehensive Housing Affordability Strategy

39. Section 578.150 is revised to read as follows:

§ 578.150 Comprehensive housing affordability strategy.

Assistance may not be made available under this part unless the applicant has submitted certifications, by the official responsible for submitting the Comprehensive Housing Affordability Strategy, that the proposed activities are consistent with the housing strategy and that the jurisdiction is following its HUD-approved CHAS.

§ 578.210 [Amended]

40. In § 578.210, paragraph (b)(7) is amended by removing the term "Homeless Assistance Plan" and substituting in its place the term "Housing Affordability Strategy"; and by removing the term "Plan" and substituting in its place the term "housing strategy".

PART 579—SUPPLEMENTAL ASSISTANCE FOR FACILITIES TO ASSIST THE HOMELESS

41. The authority citation for part 579 continues to read as follows:

Authority: Sec. 485 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 11301 note); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 579.5 [Amended]

42. In § 579.5, the definition for "Comprehensive Homeless Assistance Plan" is removed, and the following definition for "Comprehensive Housing Affordability Strategy" is inserted in its place:

* * * * *

Comprehensive Housing Affordability Strategy (CHAS or housing strategy). The housing strategy prepared by a jurisdiction and submitted to HUD in accordance with 24 CFR part 91.

* * * * *

43. The heading for subpart C, located above § 579.150, is revised to read as follows:

Subpart C—Comprehensive Housing Affordability Strategy

44. Section 579.150 is revised to read as follows:

§ 579.150 Comprehensive housing affordability strategy.

(a) *Certifications.* Assistance may not be made available under this part unless the applicant has submitted a certification that the proposed activities are consistent with a Comprehensive Housing Affordability Strategy (CHAS) and, in the case of a jurisdiction, it has submitted a certification that it is following a HUD-approved CHAS.

(b) *Applicable CHAS for a jurisdiction.* The certification of consistency for a State, metropolitan city, urban county, or other government entity must be submitted by the public official responsible for submitting the CHAS.

(c) *Applicable CHAS for a private nonprofit organization.* The certification of consistency for a private nonprofit organization must indicate consistency with the CHAS of the lowest level of

government in which the project is located that has a CHAS and the certification must be made by the public official responsible for submitting that CHAS.

§ 579.210 [Amended]

45. In § 579.210, paragraph (b)(9) is amended by removing the term "Homeless Assistance Plan" and substituting in its place the term "Housing Affordability Strategy"; by removing the term "Comprehensive Plan" and substituting in its place the term "housing strategy".

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

46. The authority citation for part 882 is revised to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart H is issued under the authority of sec. 441, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401).

47. In § 882.805, paragraph (c)(7) is amended by removing paragraph (c)(7)(ii) and the last sentence of paragraph (c)(7)(i); by removing the paragraph designation for paragraph (c)(7)(i); by removing the term "Comprehensive Homeless Assistance Plan" and substituting in its place the term "Comprehensive Housing Affordability Strategy"; and by removing the term "CHAP" in the four places where it occurs and substituting in its place the term "CHAS"

Dated: October 25, 1991

Alfred A. DelliBovi,

Deputy Secretary.

[FR Doc. 91-26211 Filed 10-30-91; 8:45 am]

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federal register

Thursday
October 31, 1991

Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 433

Medicaid Program; State Share of Financial Participation; Final Rule

42 CFR Part 447

Medicaid Program; Standards for Defining Disproportionate Share Hospitals; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[MB-022-IFC]

RIN 0938-AD36

Medicaid Program; State Share of Financial Participation

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment.

SUMMARY: On September 12, 1991, we published in the **Federal Register** an interim final rule with comment entitled "Medicaid Program; State Share of Financial Participation" (56 FR 46380). It dealt with the use of State taxes and provider donations as the State share of the costs of the Medicaid program. Because of misunderstanding created by certain portions of that rule, we are publishing this interim final rule to withdraw and cancel it and to set forth a clearer interim final rule on donations and taxes.

DATES: Effective date: This interim final rule is effective on January 1, 1992. We expect to publish a final rule as soon as possible after January 1, 1992.

Comment date: Written comments submitted in response to this interim final rule will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 2, 1991.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB-022-IFC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses: room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, room 3206, New Executive Office Building, Washington, DC 20503, Attention: Laura Oliven.

Due to staffing and resource limitations, we cannot accept audio, visual, or facsimile (FAX) copies of comments. In commenting, please refer to file code MB-022-IFC. Written comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Theresa Pratt, (410) 966-9535.

SUPPLEMENTARY INFORMATION:

I. Overview

On September 12, 1991, we published in the **Federal Register** an interim final rule with comment entitled "Medicaid Program; State Share of Financial Participation" (56 FR 46380). It dealt with the use of State taxes and provider donations as the State share of the costs of the Medicaid program. Because of misunderstanding created by certain portions of that rule, we are publishing this interim final rule to withdraw and cancel the September 12, 1991 rule and to set forth a clearer interim final rule on donations and taxes.

Even though many portions of this rule are the same as those published on September 12, 1991, we are reprinting the entire rule, including the following changes and clarifications:

We are making clear that this rule does not invalidate the longstanding practice of using intergovernmental transfers for financing a portion of the State's Medicaid program as long as such transfers are not derived from State or local revenue sources precluded by this rule. The rule leaves intact the current policy at 42 CFR 433.45(a), which we are redesignating as § 433.45(c).

This rule makes it clear that the prohibition on the use of certain donations and provider-specific taxes as the State's share of Medicaid costs applies regardless of whether the funds are raised at the State level or at a subordinate level of the State government. This rule makes it clear that when we determine that funds used as the State's share of Medicaid costs have been generated through a provider-specific tax that is subject to this rule, the amount of reimbursement attributable to provider-specific taxes that is disallowed for Medicaid purposes is equal to the lesser of: (1) The total amount of the tax that is paid by the provider (not just the Medicaid portion of the tax); or (2) the amount of Medicaid reimbursement received by the provider attributable to such taxes. In this regard, the revised interim final rule eliminates some inconsistency that appeared in the September 12 rule between statements in the preamble and the language of the rule itself.

We are implementing a delayed effective date provision to enable States time to transition out of financing the Medicaid program with State tax laws or provider donation arrangements that violate this rule. This provision is available to States that satisfy the delayed effective date requirements prescribed by this regulation.

Without making any other substantive changes, the language of the rule has been simplified and some redundant language has been eliminated.

Effective January 1, 1992, this interim final rule requires that the amount of funds donated from Medicaid providers on or after that date be offset from Medicaid expenditures incurred by the State before calculating the amount of FFP in Medicaid expenditures. It also interprets section 4701(b)(2) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), which added section 1903(i)(10) to the Social Security Act (the Act). Section 1903(i)(10) precludes Federal Financial Participation (FFP) in State payments to hospitals, nursing facilities, and intermediate care facilities for the mentally retarded for facility expenditures that are attributable to provider-specific taxes.

II. Background

A. Program Description

Federal grants to the States for the Medicaid program are authorized under title XIX of the Act to provide medical assistance to certain persons with low incomes. These Medicaid programs are jointly financed by the Federal and State governments and administered by the States. State Medicaid agencies conduct their programs according to a Medicaid state plan approved by the Administrator of the Health Care Financing Administration (HCFA). To carry out the Medicaid program, the State agency pays providers for mecical care and services provided to eligible Medicaid recipients.

The Federal government pays its share of Medicaid program expenses to the State on a quarterly basis according to a formula described in sections 1903 and 1905(b) of the Act.

B. Current Statute

Section 1902(a)(2) of the Act requires States to share in the cost of medical assistance expenditures, and permits both state and local governments to participate in the financing of the non-Federal portion of the Medicaid program. This section specifies the

minimum percentage of the State's share of the non-Federal costs and requires that the State share be sufficient to assure that the lack of adequate funds from local government sources will not prevent the furnishing of services equal in amount, duration, scope, and quality throughout the State. Section 1903 requires the Secretary to pay each State an amount equal to the Federal medical assistance percentage of the total amount expended as medical assistance under the State's plan. This amount is referred to as Federal financial participation (FFP).

Of special interest in the tax issue are sections 1902(t) and 1903(i)(10) of the Act. Section 1902(t) was added by section 4701(b)(1) of Public Law 101–508. It states that, except as provided in section 1903(i) (which precludes Medicaid payment for provider-specific taxes imposed on certain facilities), the Secretary may not "deny or limit payments to a State for expenditures, for medical assistance for items or services, attributable to taxes (whether or not of general applicability) imposed with respect to the provision of such items or services." However, section 1903(i) of the Act also was amended by Public Law 101–508. Section 4701(b)(2) of Public Law 101–508 added section 1903(i)(10), effective January 1, 1991, which precludes payment for "any amount expended for medical assistance for care or services furnished by a hospital, nursing facility or intermediate care facility for the mentally retarded to reimburse the hospital or facility for the costs attributable to taxes imposed by the State soley [sic] with respect to hospitals or facilities."

C. Current Regulations

On November 12, 1985, we published in the **Federal Register** a final rule (50 FR 46652) that established regulations at 42 CFR 433.45 relating to sources of State financial participation. The major provision of that rule was that public and private donations could be used as a State's share of financial participation in the entire Medicaid program, instead of only for training expenditures, to which they had been limited by the previous regulation found at § 432.60.

Our intent in eliminating the prior restriction was to permit the States additional flexibility in administering their programs and to reduce the recordkeeping necessary to relate donated funds exclusively to training expenditures. We had not encountered any funding issues concerning the use of donations or other voluntary payments in the limited area of Medicaid training.

The current § 433.45 defines the conditions under which public funds and private donated funds may be used as the State's share in claiming FFP. We permit the use of public funds as the State share if the funds are—

- Appropriated directly to the State or local Medicaid agency;
- Transferred from other public agencies to the State or local agency and under its administrative control; or
- Certified by the contributing public agency as representing expenditures eligible for FFP.

We permit the use of private donations or other voluntary payments as the State share if the funds—

- Are transferred to the Medicaid agency and under its administrative control; and
- Do not revert to the donor's facility or use unless the donor is a non-profit organization, and the Medicaid agency, of its own volition, decides to use the donor's facility.

The regulations do not address the remedy that would be used if a donation or other voluntary payment which did not meet the conditions of the regulation were received from providers.

There are no regulations limiting the State's use of any tax revenue for its share in the costs of the Medicaid program.

D. Program Experience

The current regulation concerning donated funds (42 CFR 433.45) precludes States from using as the State share of Medicaid expenditures, donations or other voluntary payments that are made by private for-profit hospitals and that are to be returned to the hospitals in the form of Medicaid payments. However, many States have been using donations or other voluntary payments in a way that effectively alters the statutory cost sharing formula. We believe that States' use of donations often results in effectively increasing the Federal share of Medicaid costs without an increase in either State expenditures or services. Consequently, States using donated funds are avoiding their statutory obligation under sections 1902, 1903, and 1905 of the Act to "expend" funds for medical assistance. Before we published the proposed rule (discussed below in section III. of this preamble) concerning donated funds and taxes in the **Federal Register** on February 9, 1990 (55 FR 4626), we were aware of only a few such cases, but since then, and particularly since the enactment of Public Law 101–508, we have seen the development of many additional donation or other voluntary payment programs in the States, with major consequences on Federal payments. At present, we believe that approximately 19 States are using funds donated from providers to finance part of the State share of Medicaid costs. The effect on FFP of these programs is approximately $2.1 billion in FY 1991. In addition, we know that several other States are considering the use of donated funds. If these programs are implemented, additional amounts of FFP would be involved.

III. Provisions of the Proposed Regulation

As noted above, HCFA published a proposed rule in the **Federal Register** on February 9, 1990. It would have affected States' ability to use as the State share of Medicaid expenditures funds donated from providers and derived from taxes imposed by States uniquely to providers. Specifically, the rule proposed that all funds donated from providers and the Medicaid program's share of revenues derived from provider-specific taxes be offset from nominal or cash Medicaid expenditures before calculating the Federal share of Medicaid expenditures.

The basis for this proposal was that a number of States had used provider donations and other voluntary payments and revenue from provider-specific taxes to fund part or all of the State share of Medicaid payments. We believed that, since the donation or other voluntary payment or tax or other mandatory payment revenue received from providers effectively reduced the expenditure made by the State for medical assistance costs and reduced the payment received by providers, the FFP should be based upon the "net expenditure" made by the State. In the Notice of Proposed Rulemaking (NPRM), we defined the net expenditure as the amount of the nominal or cash expenditure for Medicaid services, less the amount received from the providers in the form of donations or other voluntary payments or the Medicaid program's share of tax revenues.

HCFA's belief that FFP should be based on the "net expenditure", and not the nominal or cash expenditure made by the State was illustrated by an example in the NPRM. In the example, we assumed that a State wished to pay a hospital bill of $100. The Federal share of this payment (assuming a 75/25 Federal/State match in the sample State) would be $75. If the State received a $25 donation from the provider to be used as the State's share of the payment, the State, without making an expenditure of its own, would use these donated funds to draw down the $75 Federal share and pay the

provider $100. The effect of this transaction is that the provider would receive only $75 net payment. The $100 nominal or cash expenditure of the State would be reduced by the amount of the provider's donation. The net payment of $75 would be totally comprised of Federal funds.

The proposed rule would have required the nominal payment to be reduced or offset by the amount of the funds donated from the provider before calculation of FFP. In the example above, reducing the nominal expenditure of $100 by the amount of the donation would have resulted in a Federal matching payment of $56.25 (75 percent of the net expenditure of $75).

The proposed rule would have used the same procedure for State-imposed provider-specific taxes. These taxes, which we said might be described as coerced donations, have the same outcome of effectively reducing States' expenditures for Medicaid payments. However, the rule also proposed that the amount of the offset would be determined by the Medicaid program's share of the tax payment.

The proposed rule would have required that revenues derived from taxes (for example, sales and excise taxes) imposed by a State on the State's Medicaid payments for services be deducted from nominal expenses in order to determine the level of FFP. In some cases, States have imposed taxes on items or services which, when purchased by Medicaid recipients, would have to be paid by the State Medicaid agency. However, while State agencies pay the provider for the items or services, they fail to pay the provider for the tax. Instead, the State agencies claim entitlement to FFP calculated on the amount of the services and the imposed tax. Since the State agency never paid the tax to the provider, it did not make an expenditure. Accordingly, there is no basis for a claim for FFP on the imposed tax. This provision was included in the proposed rule to preclude States from imposing a tax on items which, when purchased by Medicaid recipients, would have to be paid by the State. The provisions of Pub. L. 101–508 specifically amend the Act to preclude payment for any amount expended for medical assistance for care or services furnished by a hospital, nursing facility, or intermediate care facility for the mentally retarded to reimburse the hospital or facility for the costs attributable to taxes imposed by the State solely with respect to hospitals or facilities. This being the case, nothing in Pub. L. 101–508 was intended to permit States to claim FFP for any imposed tax when the State, county, or other governmental instrumentality fails to pay the provider for the tax.

IV. Discussion of Comments

We received 79 items of timely correspondence from individual hospitals, hospital associations, various levels of State and local governments, and a number of national organizations. Only a few commenters supported the rule. The majority of comments we received urged HCFA to eliminate or to modify the proposal. The specific comments received and our responses to them are as follows:

Comment: One commenter requested clarification of the effective date of the proposed rule.

Response: These regulations are effective on January 1, 1992. When calculating State expenditures that are claimable for FFP on or after January 1, 1992, HCFA will subtract from nominal State expenditures the amount of any donations made to the State, county or any other governmental instrumentality, by or on behalf of health care providers.

FFP is not available for that portion of State, county, or other governmental instrumentality payment to facilities for costs attributable to a provider-specific tax; that is, a tax or other mandatory payment imposed by the State solely with respect to hospitals, nursing facilities, or intermediate care facilities for the mentally retarded. If any level of the State government imposes a provider-specific tax, and if any level of the State government reimburses such a provider for the costs attributable to the tax, the specific amount of State expenditures disallowed for Federal matching is limited to the lesser of the total amount of the provider-specific tax paid by each provider or the amount of Medicaid reimbursement received by each provider attributable to such taxes.

Comment: A number of commenters questioned HCFA's authority to issue the proposed regulation. Many of these commenters believed the proposal was not supported by any authority in the Act limiting the sources of the State share of Medicaid expenditures. Others felt the proposal was unconstitutional and interfered with a State's right to levy taxes.

Response: HCFA does not agree with these comments. Nothing in the proposed rule would have in any way limited a State's flexibility to impose taxes or other mandatory payments, or to receive donations or other voluntary payments from Medicaid providers. (In any event, the circumstances under which a State can be reimbursed for taxes in its Medicaid program is now delineated in the Act itself.) Rather, the proposal would have set forth the consequences on FFP of donations or other voluntary payments and provider-specific taxes or other mandatory payments. In our view, this regulation is based upon sections 1903 and 1905 of the Act. These provisions of the Act provide for FFP in State expenditures for medical assistance. Donations or other voluntary payments, when used as the State share of the FFP payment, permit States to receive the Federal share for medical assistance without making any expenditures of their own. Since our analysis has led us to conclude that funds received by States from provider donations or other voluntary payments effectively reduce the expenditure actually made by the State on payments to these providers, the FFP should be based upon the net expenditure made by the State and should not be permitted to be affected by a State's use of revenues from donations or other voluntary payments. (As indicated above, the rule's treatment of taxes is now based upon section 1903(i)(10) of the Act, which specifically precludes FFP for costs attributable to certain provider-specific taxes.)

Comment: Several States and hospitals expressed the view that the proposed regulation would limit States' ability to use these funds for program growth and expansion, and would have a negative impact on the accessibility and quality of care provided to Medicaid recipients.

Response: HCFA agrees that the proposed offset would impact on State's use of these funds. Nonetheless, HCFA supports States' efforts to expand and improve their programs, and will certainly share in the costs of these improvements as provided in the Medicaid statute. We do not believe that States should be permitted to use donated funds, however, in a way that effectively alters the statutory cost sharing formula. We believe that States' use of donations has the result of effectively increasing the Federal share of Medicaid costs without an increase in State expenditures. Consequently, States using donated funds are avoiding their statutory obligation under sections 1902, 1903, and 1905 of the Act to "expend" funds for medical assistance. While HCFA supports States' expansion efforts, it does not believe the cost of these expansions should fall on the Federal government in violation of the statutorily authorized cost-sharing formula.

Comment: One State Medicaid agency expressed its view that the proposal would create an atmosphere which

would encourage States to manipulate the system for funding the State share.

Response: On the contrary, HCFA believes that the present system, under which States and providers are permitted to engage in a variety of donation or other voluntary payment programs aimed at maximizing FFP, leads to manipulation of the system. HCFA would reiterate that the proposal would require that funds donated from providers would be offset from nominal or cash expenditures made by States for medical assistance payments before calculating FFP. This procedure would permit FFP to be based on the net expenditures made by States and FFP would not be affected by the States' use of donated funds.

Comment: One commenter criticized the example included in the NPRM of the effect of donations or other voluntary payments on FFP. This example used a 75 percent Federal matching rate. The commenter expressed the view that, since few States have such a high Federal match rate, the example overstated the general effect of donated funds.

Response: We agree with the comment to the extent that most States have matching rates below the level assumed in the example. As the commenter noted, the effect of donations or other voluntary payments on FFP is proportional to the matching rate. The example assumed a 75 percent matching rate for two reasons. First, this was approximately the match rate of the State described in the example. Second, we wanted to illustrate the impact that donations or other voluntary payments have on FFP. While the specific cost impact is, of course, dependent on the specific Federal matching rate, the example is valid in that it illustrates our belief that provider donations or other voluntary payments serve to increase the real Federal share of Medicaid expenditures.

Comment: Several commenters asked if HCFA inadvertently had omitted the material in the current § 433.45(a), which outlines when public funds may be used as the State share.

Response: Neither the proposed rule nor this interim final rule precludes States from receiving provider donations or other voluntary payments. However, in both the proposed rule and in this interim final rule, we intentionally revised § 433.45 to describe how a State's expenditure for medical assistance is calculated in the presence of provider donations, tax revenues, or other payments made directly or indirectly to the State, County, or any other governmental instrumentality from or on behalf of health care providers. Section 433.45(e) will apply equally to all types of provider donations or voluntary payments, both public and private, and will offset any monies received from provider donations or voluntary payments in order to determine the true net expenditure for the Federal match. With respect to provider-specific taxes or other mandatory provider-specific payments, FFP is not available for payment to hospitals, nursing facilities, or intermediate care facilities for the mentally retarded for that portion of the State's payment to these facilities for the costs attributable to the provider-specific tax. In other words, the amount of reimbursement attributable to provider-specific taxes that will be disallowed will be the lesser of the total amount of the provider-specific tax paid by the provider, or the amount of Medicaid payment received by the provider attributable to such taxes.

Neither the proposed rule nor the September 12, 1991 publication of this interim final rule invalidated the longstanding practice of using intergovernmental transfers for financing a portion of the State's Medicaid program as long as such transfers are not derived from State or local revenue sources precluded by this rule. This rule leaves intact the current policy in regulations at § 433.45(a), which we are redesignating as § 433.45(c).

Comment: One commenter expressed concern that the proposed § 433.45(e) (1) and (2), which set forth the methodology for offsetting provider-specific taxes from State Medicaid expenditures, were difficult to understand and should be clarified.

Response: As a result of the provisions of section 4701(b)(1) of Public Law 101–508 (discussed above in the "Background" portion of this preamble), these paragraphs have been deleted in their entirety. In addition, since nothing in Public Law 101–508 permits States to claim FFP for any imposed tax when the State, county, or other governmental instrumentality fails to pay the provider for the tax, the proposed § 433.45(f) is unnecessary and therefore has been deleted. The proposed § 433.45(f) stated that revenues derived from taxes imposed by a State on the State's Medicaid payments for services are deducted from nominal expenditures in order to determine the level of FFP.

Comment: Several commenters expressed concern that the proposed rule was overly broad and that clarification of these terms is needed: offset, provider, transfer of funds, unfairly affecting FFP, nominal versus real, organizations related to the State government, fund, and instrumentality. Additionally, some commenters expressed concern that this rule would prohibit intergovernmental transfers.

Response: The term "health care provider" has been clarified. We do not agree that other terms in the proposed rule were overly broad or in need of additional clarification. The proposed rule published on February 9, 1990 contained either an explicit definition or an illustration of each of the terms listed above. With respect to intergovernmental transfers, neither the proposed rule nor this interim final rule prohibits such transfers. However, because of misunderstanding created by certain portions of the interim final rule published on September 12, 1991, we have revised this interim final rule to clarify that HCFA has not invalidated the longstanding practice of using intergovernmental transfers for financing a portion of the State's Medicaid program as long as such transfers are not derived from State or local revenue sources precluded by this rule. Accordingly, this interim final rule will leave intact the current policy in regulations at § 433.45(a). As amended, the policy at § 433.45(a) now appears in § 433.45(c) and the proposed § 433.45(g) has been deleted.

When calculating State expenditures that are claimable for Federal matching as medical assistance, this rule makes clear that HCFA subtracts from nominal State expenditures the amount of any donations made to the State, County, or any other governmental instrumentality by or on behalf of health care providers. Additionally, this rule, interprets the provisions of section 4701(b) of Public Law 101–508, which provide that FFP is not available for that portion of State's payment to hospitals, nursing facilities, or intermediate care facilities for the mentally retarded for costs attributable to a provider-specific tax. Accordingly, this revised interim final rule clarifies that the prohibition on the use of certain donations and provider-specific taxes as the State's share of Medicaid costs will apply regardless of whether the funds are raised at the State level or at a subordinate level of the State government (that is, a county, city, or other public authority operating hospitals).

To illustrate, if a local government accepts and transfers to the State donations or other voluntary payments made by or on behalf of health care providers, the donation will be subtracted from nominal State expenditures in order to determine the level of FFP.

With respect to taxes or other mandatory payments, if any level of the State government imposes a provider-specific tax or any other mandatory payment, and if any level of the State government reimburses the affected providers for the costs attributable to the tax or mandatory payment imposed, the specific amount ineligible for Federal matching is limited to the lesser of (1) the total amount of the provider-specific tax paid by the provider or (2) the amount of Medicaid reimbursement received by the provider that is attributable to such taxes.

HCFA has analyzed a number of existing intergovernmental transfer programs to date that appear to be allowable under this regulation. However, we are concerned that this may be an area of potential abuse and States should be on notice that this may be the subject of further review to assure that States maintain their appropriate shares of Medicaid financing.

V. Provisions of this Interim Final Rule with Comment

This regulation is being published as an interim final rule with comment for two reasons. First, Congress imposed a moratorium on issuing a donated funds regulation in section 8431 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647). It prohibited the Secretary from "issuing any final regulation prior to May 1, 1989, changing the treatment of voluntary contributions * * * utilized by States to receive Federal matching funds under" Medicaid. The May 1st date has been extended several times since. Most recently, in section 4701(a) of Public Law 101-508, the date was extended to December 31, 1991. We plan to republish this interim final rule as a final rule as soon as possible after January 1, 1992.

Additionally, when the proposed rule was published, most State financial programs were based on tax funding mechanisms. Since then, the situation has changed dramatically; there is now widespread use of State donation or other voluntary payment programs that unfairly affect the Federal share of FFP. We wish to obtain additional public comments on our specific efforts to curtail State abuse of donation or other voluntary payment programs. We believe that publishing an interim final rule with comment will give us maximum flexibility and will give interested parties another opportunity to express their concerns. Although we could issue this as a final rule with a January 1, 1992 effective date, we want to obtain additional comments, specifically on those portions relating to donations or other voluntary payments, before January 1, 1992.

Section 4207(j) of Public Law 101-508 grants the Secretary the authority to issue regulations (on an interim or other basis) as may be necessary to implement the provisions of Public Law 101-508. Therefore, we have included in this regulation a provision at the new § 433.45(d) implementing section 4701(b)(2) of Public Law 101-508, which amended section 1903(i) of the Act. It precludes FFP in State repayment of provider-specific taxes.

The provisions of this interim final rule with comment differ from the provisions of the proposed rule published in the **Federal Register** on February 9, 1990 in seven major respects:

1. We have expanded the definition of "health care provider" at § 433.45(b)(1) to include corporations or partnerships formed by or organized on behalf of Medicaid providers, and employees, spouses, parents, children, and siblings, of a Medicaid provider or of a person who has an ownership or control interest in a Medicaid provider.

2. We have deleted the proposed paragraph (2) that defined "net expenditure", and added new paragraphs (2), (3), and (4) to the definitions at § 433.45(b). In the new § 433.45(b)(2), we define "tax" as any mandatory payment imposed by a State or subordinate unit of government, including, but not limited to assessments, fees, charges or duties. "Provider-specific tax" is defined at § 433.45(b)(3) as a tax that is imposed solely with respect to hospitals, nursing facilities, or intermediate care facilities for the mentally retarded. A tax is imposed solely with respect to one or more of those three types of providers if no other entity is subject to the identical tax. Examples of taxes that are not identical are those with different nominal tax rates, different tax bases, or different exclusions, deductions, or credits available to the provider.

For example, assume a situation in which hospitals, nursing facilities, and intermediate care facilities for the mentally retarded are subject to a 5 percent flat tax on general revenues, while pharmacies are subject to a 1 percent flat tax on general revenues. Under that scenario, the presence of the 1 percent pharmacy tax does not alter the fact that, for the purposes of section 1903(i)(10) of the Act, the 5 percent tax is imposed solely with respect to hospitals, nursing facilities, and intermediate care facilities for the mentally retarded. Similarly, even if this hypothetical example were changed so that all four entities were subject to the same nominal tax rate (that is, 5 percent), pharmacies would still not be subject to the identical tax imposed with respect to the other three entities if the tax base prescribed for pharmacies differs from that of the other groups, or if the exclusions, deductions, or credits available to pharmacies differ from those available to the other groups. These examples are illustrative; taxes may differ in other respects so that the tax imposed with respect to one entity is not the same as the tax imposed with respect to another entity.

In § 433.45(b)(4), we define "Donation" as any voluntary payment, including, but not limited to, a gift, contribution, presentation or award.

3. In the proposed rule, we suggested adding a paragraph (c) to § 433.45 ("Determining the level of State expenditures for FFP purposes."). It would have stated that, when calculating State expenditures that are claimable for Federal matching as medical assistance, HCFA subtracts from nominal State expenditures the amount of any revenue to the State generated by or on behalf of health care providers when that revenue results from donations made to the State by the providers or results from taxes applied uniquely to providers. This procedures also applies to State revenues generated by taxes paid by the State that are imposed on payments for Medical Assistance. Since this interim final rule with comment contains §§ 433.45(d) "Provider-specific taxes" and 433.45(e) "Donations," the proposed § 433.45(c) "General rule" is duplicative and has been deleted. Similarly, to avoid redundant language and possible confusion and misunderstanding about the longstanding practice of using intergovernmental transfers for financing a portion of the State's Medicaid program, we have also deleted the proposed § 433.45(g).

In this interim final rule, § 433.45(c) states that public funds may be considered as the State's share in claiming FFP if they are not generated through a provider-specific tax or a donation as described in paragraphs (d) or (e) respectively and if they meet the following conditions:

The public funds are appropriated directly to the State or local Medicaid agency, or transferred from other public agencies to the State or local agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for FFP under this section.

The funds are not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

4. We have added a paragraph (d) to § 433.45. It states that FFP is not available for that portion of States' payment to facilities for costs attributable to a provider-specific tax. If any level of State government imposes a provider-specific tax and if any level of the State government reimburses the affected providers for costs attributable to the tax imposed, the specific amount of State expenditures disallowed for Federal matching is limited to the total amount of the provider's reimbursement attributable to the provider-specific tax paid by the provider (not just the Medicaid portion of the tax). In other words, the amount of State expenditures attributable to provider-specific taxes that will be disallowed will be the lesser of: (1) The total amount of the provider-specific tax paid by the provider; or (2) the amount of Medicaid reimbursement received by the provider attributable to such taxes.

A provider is reimbursed for the costs attributable to the tax when any one of the following conditions is met:

—A cost-reimbursed provider includes the cost of the tax on its cost report as an allowable cost.

—A provider paid on a prospective basis includes the cost of the tax in its base year costs for payment rate calculation.

—There is linkage between payment to the provider and the tax program. For example, this linkage is deemed to exist when any of the following conditions is met:

• The payment to the provider paying the tax is related integrally to the tax program. Examples of this integral relation would be the dedicated use of the tax revenue in a special fund or account to be used to enhance Medicaid payments from the State to the provider paying the tax, or statements of legislative purpose in State enabling legislation or other legislative history or evidence establishing a linkage between the tax and Medicaid payments to the provider paying the tax.

• A provider is "held harmless" for its tax payment by an effective guarantee that its enhanced Medicaid payment from the State will at least cover the cost of the tax.

• The provider's tax payment is correlated significantly to the State's Medicaid reimbursement or payment (including, for example, disproportionate share hospital adjustments) to the provider.

5. We also proposed adding a new paragraph (e) to § 433.45. In this interim final rule with comment, we have deleted that paragraph.

6. We have also deleted the proposed § 433.45(f).

7. We have added a new § 433.45(f), which provides for a delayed effective date of this rule (see "VI. Delayed Effective Date" below). This provision is available to States that satisfy the delayed effective date requirements prescribed by this regulation.

The first and second changes simply amend the definition section to clarify our policy on other mandatory and voluntary payments and to implement a definition of "provider-specific taxes" consistent with the statutory provisions in section 1903(i)(10). The proposed definition of "health care provider" has been restructured and language has been added that more explicitly defines what the proposed definition meant by this term and by "a relative of a provider."

The third, fourth, fifth, and sixth changes were made to conform to the provisions of section 4701(b)(1) of Public Law 101–508, which added paragraph (t) to section 1902 of the Act. Section 1902(t) generally precludes the Secretary from limiting payments to a State for medical assistance, attributable to taxes imposed by the State. Because of this provision, we have modified the portion of the proposed rule which would have required offset of the Medicaid program share of revenues attributable to provider-specific taxes or any other mandatory payments.

We note specifically that the fourth change is consistent with our interpretation of section 4701(b)(2) of Public Law 101–508, which amended section 1903(i) of the Act. Section 1903(i) now precludes FFP in State payments to hospitals, nursing facilities (NFs), and intermediate care facilities for the mentally retarded (ICFs/MR) to reimburse the facility for the cost attributable to the tax imposed by the State solely with respect to hospitals or facilities. The September 12, 1991 publication contained some inconsistency between statements in the preamble and the language of the rule itself. This rule makes clear that when we determine that funds used as the State's share of Medicaid costs have been generated through a provider-specific tax that is subject to this rule the amount that will be disallowed for Medicaid purposes is the lesser of (1) the total amount of the tax that is paid by the provider (not just the Medicaid portion of the tax) or (2) the amount of Medicaid reimbursements received by the provider attributable to such taxes. This provision of the regulation is now consistent with section 1903(i)(10) of the Act and in no way precludes States from levying provider-specific taxes or any other mandatory payments.

VI. Delayed Effective Date

We recognize that the effective date of this interim final rule, January 1, 1992, will come in the middle of some States' budget cycles and that the result may be to disrupt State budget planning for the current fiscal period. We believe that the effective date specified for this rule is fully consistent with the expiration of the Congressional moratorium on rules relating to provider donations and with the existing provisions of the Medicaid law with respect to taxes. Further, since February 1990, States have been on notice that regulations were likely in this area. Nevertheless, many States have expanded their current tax or donation programs or initiated new programs. However, in order to avoid hardship in the case of any State that is interested in revising its tax law or provider donation arrangements to be consistent with the provisions of this rule, we are willing to consider delaying the effective date of the rule in that State for six months to enable the State to enact or implement the necessary changes.

This six-month delay will be granted if the State—

Establishes to the HCFA Administrator's satisfaction that the application of this rule to existing State law or administrative mechanisms will cause disallowances to occur;

Submits an application setting forth its plan to eliminate the use of taxes or donations prohibited by this rule; and

Enters into an agreement with the Administrator to seek legislation revising State law, or to revise relevant administrative arrangements in a manner that will eliminate the use of taxes or donations prohibited by this rule. Such legislation must be enacted or such changes implemented not later than July 1, 1992.

If such legislation or administrative arrangements are not enacted by July 1, 1992, or if the State enacts new legislation or engages in administrative actions that have the effect of expanding funding or payment practices that are prohibited by this rule, the agreement and the delayed effective date will be voided retroactively and the State will be subject to disallowances for January through June 1992. The six month delay is only applicable to State statutory provisions or administrative arrangements which HCFA determines were in effect on September 12, 1991.

We believe that this grace period will be sufficient to enable any State to

transition out of these arrangements and to put in place alternate means of financing its Medicaid program. Accordingly, we have added a new paragraph (f) to § 433.45 to effectuate this provision. Although these applications must be submitted no later than January 2, 1992, we encourage States desiring to take advantage of this provision to submit applications as soon as possible.

VII. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any interim final rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

E.O. 12612 requires us to prepare an analysis of any regulation or other policy statement or action that is likely to have substantial direct effects on the operations of State or local governments, limit State discretion in the administration of programs, or preempt State laws.

In addition, we generally prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that an interim final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not small entities, but we consider all providers to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any interim final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

B. Effect on Program Expenditures

In the last several years, States have increased dramatically their use of donations or other voluntary payments and tax payments from health care providers to increase the Federal share of Medicaid expenditures. Effective January 1, 1992, this interim final rule will comment requires that the amount of funds donated by or behalf of health care providers be deducted from Medicaid expenditures before calculating the amount of FFP in Medicaid expenditures. Currently, States tax and seek donations or other voluntary payments from Medicaid providers specifically and use those funds as their share of Medicaid expenditures. The taxes or other mandatory payments and donations or other voluntary payments generate additional Federal matching funds for the States without the expenditure of State funds. This interim final rule with comment also implements section 4701(b)(2) of Public Law 101–508, which precludes FFP in State payments to hospitals, nursing facilities and intermediate care facilities for the mentally retarded for facility costs that are attributable to provider-specific State taxes. We estimate that approximately 19 States use provider tax programs and 19 use provider donation or other voluntary payment programs which generated an estimated $3 billion in Federal matching funds in FY 1991, and, at least, an anticipated $5.5 billion in FY 1992. We believe programs like these would generate even more Federal matching funds as more States move to implement provider tax or other mandatory payment or donation or other voluntary payment programs.

It is difficult to anticipate precisely what action States will take as a result of this interim final rule. Since the effect of this interim final rule with comment is likely to exceed the $100 million threshold, it is a major rule under E.O. 12291 and a regulatory impact analysis is required. Furthermore, since this interim final rule with comment could have a significant economic impact on some small entities, we are preparing a voluntary analysis to conform to the objectives of E.O. 12612, the RFA, and section 1102(b) of the Act.

C. Effect on Providers

As a result of this interim final rule with comment, State programs may shift away from donations or other voluntary payments and disallowed provider-specific tax or any other mandatory payment programs to mechanisms which fall outside this regulation.

Some States have directly linked donation and other voluntary payment programs to increases in Medicaid hospital payment rates. Other States have levied taxes or other mandatory payments on providers and modified Medicaid payment rates in such a way as to reimburse the provider for the cost of the tax. Thus, it might be argued that this interim final rule with comment could preclude providers from an opportunity to receive increased payments for services furnished to Medicaid recipients. We concede that in some cases this might be true, but only to the extent that the State is unable to find legitimate alternative sources of State funds to finance these increases in payment rates.

D. Conclusion

In keeping with the requirements of E.O. 12612, we have determined that we are facing a problem of national scope. States using donated funds are circumventing their obligation under sections 1902, 1903, and 1905 of the Act to "expend" funds for medical assistance. Therefore, we are justified in requiring the offset of provider donations from the nominal or cash Medicaid expenditures before calculating the Federal share of Medicaid expenditures.

Moreover, the provision of this interim final rule with comment that precludes FFP in State payments to hospitals, nursing facilities, and intermediate care facilities for the mentally retarded which reimburse the facility for the cost attributable to the tax imposed by the State solely with respect to hospitals or facilities, is consistent with our interpretation of section 4701(b)(2) of Public Law 101–508, which amended section 1903(i) of the Act.

This interim final rule with comment will in no way preclude States from increasing this share of Medicaid expenditure from other sources.

VIII. Information Collection Requirements

Regulations at § 433.45(f) contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). The information collection requirements concern an application setting forth the State's plan for eliminating the use of provider-specific taxes or donations for the State's share of Medicaid expenditures. The respondents who will provide the information are States acting through their respective Medicaid agencies.

Public reporting burden for this collection of information is estimated to be 80 hours pre response. OMB approval has been given. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESSES" section of this preamble.

IX. Response to Comments

Because of this large number of items of correspondence we normally receive on a rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and we will respond to the comments in the preamble of that rule. We will also respond to all comments submitted in response to the September 12, 1991 rule. Generally, commenters do not have to resubmit their comments; however, commenters are encouraged to resubmit their comments if the comment referenced material that has been amended by this revised interim final rule.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant program—health, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR part 433, subpart B is amended as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

Subpart B—General Administrative Requirements

1. The authority citation for part 433 is revised to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1092(a)(18), 1902(a)(25), 1902(a)(45), 1902(t), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(i), 1903(o), 1903(p), 1903(r), 1912, and 1917 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), 1396k, and 1396(p).

2. Section 433.45 is revised to read as follows:

§ 433.45 Determining the level of State expenditures for FFP purposes.

(a) *Purpose.* This section describes how a State's expenditure for medical assistance is calculated in the presence of donations, tax revenues or other transfers to the State from those who receive Medicaid payments from the State.

(b) *Definitions.* As used in this section unless the context indicates otherwise:

(1) *Health care provider* includes any—

(i) Medicaid provider;

(ii) Organization or association of which Medicaid providers are members or which operates on behalf of Medicaid providers;

(iii) Corporation or partnership formed or organized by or on behalf of Medicaid providers;

(iv) Person who has an ownership or control interest (as defined in section 1124(a)(4)(3) of the Act) in a Medicaid provider;

(v) Employee, spouse, parent, child, or sibling of an individual described in paragraphs (b)(1) (i) and (iv) of this section; or

(vi) Individual or entity that is a major customer or supplier of a Medicaid provider.

(2) *Tax* means any mandatory payment imposed by a State or subordinate unit of government, including, but not limited to, assessments, fees, charges or duties.

(3) *Provider-specific tax* means a tax that is imposed solely with respect to hospitals, nursing facilities, and/or intermediate care facilities for the mentally retarded. A tax is imposed solely with respect to one or more of those three providers if no other entity is subject to the identical tax. Examples of taxes which are not identical are those with different nominal tax rates, different tax bases, or different exclusions, deductions, or credits available to the provider.

(4) *Donation* means any voluntary payment, including, but not limited to, a gift, contribution, presentation or award.

(c) *Public funds as the State's share.* Public funds may be considered as the State's share in claiming FFP if they are not generated through a provider-specific tax or a donation as described in paragraph (d) or (e) respectively of this section and if they meet the following conditions:

(1) The public funds are appropriated directly to the State or local Medicaid agency, or transferred from other public agencies to the State or local agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for FFP under this section.

(2) The funds are not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(d) *Provider-specific taxes.* FFP is not available for that portion of States' payment to facilities for costs attributable to a provider-specific tax. If any level of the State government imposes a provider-specific tax and if any level of the State government reimburses these providers for costs attributable to the tax imposed, the specific amount of State expenditures disallowed for Federal matching is the lesser of the total amount of the provider-specific tax paid by the provider, or the amount of Medicaid payment received by the provider attributable to such taxes. A provider is reimbursed for the costs attributable to the tax if any of the following conditions is met:

(1) A cost-reimbursed provider includes the cost of the tax on its cost report as an allowable cost.

(2) A provider paid on a prospective basis includes the cost of the tax in its base year costs for payment rate calculation.

(3) There is linkage between payment to the provider and the tax program. For example, this linkage is deemed to exist when any of the following conditions is met:

(i) The payment to the provider paying the tax is related integrally to the tax program. Examples of this integral relation would be the dedicated use of the tax revenue in a special fund or account to be used to enhance Medicaid payments from the State to the provider paying the tax, or statements of legislative purpose in State enabling legislation or other legislative history or evidence establishing a linkage between the tax and Medicaid payments to the providers paying the tax.

(ii) A provider is "held harmless" for its tax payment by an effective guarantee that its enhanced Medicaid payment from the State will at least cover the cost of the tax.

(iii) The provider's tax payment is correlated significantly to the State's Medicaid reimbursement or payment (including, for example, disproportionate share hospital adjustments) to the provider.

(e) *Donations.* When calculating State expenditures that are claimable for Federal matching as medical assistance, HCFA subtracts from nominal State expenditures the amount of any donations made to the State, county, or any other governmental instrumentality, by or on behalf of health care providers.

(f) *Delayed effective date.* In the case of any State which HCFA determines had in effect on September 12, 1991, State statutory provisions or administrative arrangements providing for the use of provider-specific taxes or donations for expenditures under its Medicaid program for which FFP would not be available under this section, the State may request from HCFA, and

HCFA may grant, a delay in the application of the provisions of this section to that State, until July 1, 1992, if the following conditions are met:

(1) The State, not later than January 2, 1992, submits an application setting forth the State's plan for eliminating the use of these taxes or donations for the State share of Medicaid expenditures;

(2) The State agrees in writing to implement that plan through the enactment of State legislation that would revise State law, or through the revision of administrative arrangements, in a manner that would eliminate the use of these taxes or donations for the State share of Medicaid expenditures; and

(3) This legislation is enacted and goes into effect, or the administrative arrangements are revised, not later than July 1, 1992.

(4) The State does not enact other legislation or engage in administrative actions that have the effect of expanding funding or payment practices that are prohibited by this section.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: October 20, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: October 29, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-26394 Filed 10-29-91 1:00 pm]

BILLING CODE 4120-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 447

[MB-058-P]

RIN 0938-AF75

Medicaid Program; Standards for Defining Disproportionate Share Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: The rule proposes standards for defining disproportionate share hospitals under the Medicaid program. While certain hospitals must be designated under Federal law as disproportionate share hospitals, under current rules States are free to establish individual criteria for determining whether additional hospitals qualify as disproportionate share hospitals. This rule would provide that hospitals with less than average utilization by Medicaid or low-income individuals cannot be included as disproportionate share hospitals under expanded State definitions.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 30, 1991.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB-058-P, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Please address copies of comments on information collection requirements to: Laura Oliven, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20500.

Due to staffing and resource limitations, we cannot accept audio or video comments or facsimile (FAX) copies of comments. In commenting, please refer to file code MB-058-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 245-7890).

FOR FURTHER INFORMATION CONTACT: Betty Kern, (301) 966-4580.

SUPPLEMENTARY INFORMATION:

I. Background

In general, the Medicaid program, title XIX of the Social Security Act (the Act), provides medical assistance to certain individuals with limited income and resources. The program is State administered but funded in part with Federal matching funds. Basic tenets underlying the program are that medical services meet the general needs of the population being served, comply with quality safeguards, and comply with applicable Federal and State laws. In addition, States are to assure that their payments for certain institutional services are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities (section 1902(a)(13) of the Act). The Omnibus Budget Reconciliation Act of 1987 and subsequent amendments established requirements for additional Medicaid payments to hospitals that serve disproportionately large numbers of Medicaid or low-income patients. This regulation would establish standards to be used by States in determining which hospitals qualify for these additional payments.

Congressional concern for the so-called "disproportionate share hospitals" was first expressed through an amendment to section 1902(a)(13)(A) of the Act by section 2173(a)(1) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) (OBRA '81). This 1981 amendment required States to assure that their payment rates took into account the situation of hospitals serving a disproportionate number of low-income patients with special needs. The legislative history of OBRA '81 (H.R. Rep. No. 97-208, 97th Cong. 1st Sess. 962 (1981)) indicated that Congress expected States to consider the special costs they believed disproportionate share hospitals experience. Neither the amendment nor its legislative history gave specific guidance as to what constituted a "disproportionate share hospital," or a "disproportionate number" of low income patients with special needs, or as to the nature of the "special costs" these hospitals may incur.

HCFA decided when implementing the 1981 legislation not to issue a Federal definition in regulations because Congress did not provide specific guidance and because we wanted at that time to offer the States maximum flexibility.

Section 9519 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) required the Secretary to report to Congress on State implementation of the 1981 provisions and specifically to include the following:

A description of the mechanisms used by States in their Medicaid State plans to take into account the situation of hospitals that serve a disproportionate number of low income patients with special needs.

Identification of all the hospitals that have received a disproportionate share adjustment.

For each listed hospital, the proportion of inpatient days attributable to Medicaid recipients and other low-income patients.

The Secretary's report to Congress in January 1987 showed that—

23 States implemented the OBRA '81 requirements through systems that determined payment rates on the basis of reasonable costs of each facility or established prospective rates based on such costs.

(In other words, these States provided an assurance that they met the needs of the disproportionate share hospitals because their systems took into account the situation of each hospital.)

The remaining 27 States had incorporated in their Medicaid State plans specific definitions of "disproportionate share" hospitals and mechanisms for making payment adjustments for these hospitals.

A number of States had definitions of disproportionate share hospitals that were so restrictive that no or very few hospitals qualified.

Section 4112 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) (OBRA '87) established specific requirements for Medicaid payments to disproportionate share hospitals.

Section 411(k)(6) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360), hereafter referred to as "MCCA", incorporated the OBRA '87 disproportionate share provisions into the Act by designating them as section 1923. The specific provisions of section 1923 of the Act as amended by MCCA that are pertinent to this proposed rule are summarized below:

1. Section 1923(a):

a. Requires States to submit, by July 1, 1988, a State plan amendment that—Defines "disproportionate share hospitals" at least as broadly as section 1923(b); and Provides for payment adjustments consistent with section 1923(c).

b. Requires the Secretary to review and approve or disapprove the amendments.

c. If the amendment is disapproved, requires the State to submit a revised amendment.

d. Specifies that these requirements may not be waived under section 1915(b)(4) of the Act.

2. Section 1923(b):

a. Defines a "disproportionate share hospital" as a hospital that meets the obstetric services requirements of section 1923(d) and has—

A Medicaid inpatient utilization rate that is at least one standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the State; or

A low-income utilization rate in excess of 25 percent.

b. For purposes of the disproportionate share hospital definition the terms "Medicaid inpatient utilization rate" and "low-income utilization rate" must satisfy the statutory definitions described in paragraphs (2) and (3) of section 1923(b) of the Act.

II. Provisions of the Proposed Rule

We believe that hospitals with below-average Medicaid or low-income utilization cannot reasonably be considered as disproportionate share hospitals under expanded State definitions, when compared to other hospitals in the State. (By "expanded definitions" we mean definitions in excess of the minimum definitions set out in section 1923 of the Act.) To permit a greater number of hospitals to qualify for disproportionate share payments, would, in our view, not be consistent with the meaning of the statutory term "disproportionate share".

In order to assure that States are not making disproportionate share payment adjustments to hospitals that to not service a disproportionate number of either Medicaid patients or low-income patients, we propose to establish standards for defining disproportionate share hospitals, under expanded State definitions.

Under current disproportionate share hospital payment policies, States are free to establish their own criteria for determining whether a hospital qualifies as a disproportionate share hospital, subject to certain statutorily imposed minimums in section 1923(d) of the Act. In accordance with section 1923(c) of the Act, States are also free to establish the formula used to calculate the amount of the payment adjustment each disproportionate share hospital receives. These payments adjustments are not subject to Federal limitations based on section 1902(h) of the Act. Because there are no payment limitations, some States have provided very large payment adjustments to certain hospitals within the State. Other States have proposed to designate all or virtually all hospitals as disproportionate share hospitals.

Some States have used the discretion given to them in setting disproportionate share hospital payment policy, coupled with the ability to use provider tax and donation revenues as the State share of Medicaid payments, in ways that we believe exceed Congress' intent of providing enhanced payments only to hospitals that serve a disproportionate number of Medicaid and other low-income patients. At present, 38 States are either using, or planning to use, donation and tax programs to obtain additional Federal funds. The most common form these programs take is that States use hospital tax and donation revenues as the State share of Medicaid expenditures to secure additional Federal funds. The provider tax amount is usually returned in the form of disproportionate share hospital payments. States use the disproportionate share payments as the vehicle because they are not subject to Medicare upper limits, and current policy permits flexibility in how these payments are made. Therefore, States find it easy to structure payment formulas that can repay providers for their tax costs. Moreover, by having expanded criteria for qualifying as a disproportionate share hospital, States can use the rubric of disproportionate share hospital payments to repay all hospitals in the State for participating in the tax and donation programs.

At present, at least 17 States have expanded their definitions of disproportionate share hospitals in their State plans. Several other States have proposed State Plan amendments that expand existing disproportionate share hospital definitions. As indicated above, some States have expanded their disproportionate share hospital definition to include all or virtually all hospitals within the State as disproportionate share hospitals.

HCFA believes a preventive measure should be taken to forestall States from further abuse of the disproportionate share hospital authority to make these payment. HCFA strongly believes that placing reasonable limits on the criteria States use to define disproportionate share facilities will now only affect a few States, but it will prevent other States from beginning this practice.

Moreover, we believe that the potential misuse of disproportionate share hospital payment authority, particularly with respect to the disproportionate share hospital definition, will, if permitted to continue, dilute the effects of the Federal disproportionate share hospital policies. HCFA must assure that scarce Medicaid resources are directed to those disproportionate share hospitals most in need. This we believe is consistent with the original intentions of Congress to provide additional funding to the hospitals most dependent on Medicaid revenues or which provide the most services—often uncompensated—to low-income individuals.

In order for a State to qualify a hospital as a disproportionate share hospital under section 1923 of the Act, and make the hospital eligible to receive a disproportionate share payment adjustment, it must include in its State plan a definition of disproportionate share hospital. This definition must include hospitals having either (1) a Medicaid utilization percentage at least one standard deviation above the Statewide arithmetic mean; or (2) a low-income utilization rate (as defined in section 1923(b)(3)) above 25 percent.

We propose to revise 42 CFR 447.253, which contains other requirements concerning payment rates for hospital and long-term care facility services. We would add a new paragraph (h) to specify that a State may designate additional hospitals to be paid a disproportionate share payment adjustment under expanded State definitions as long as the hospitals have either:

(a) A Medicaid utilization percentage at or above the Statewide Medicaid utilization rate arithmetic mean; or

(b) A low income utilization rate at or above the Statewide arithmetic mean low income utilization rate.

We are proposing to establish the maximum level for determining which hospitals could be considered disproportionate share hospitals at the average Medicaid utilization level or the average low-income utilization rate for all hospitals in the State. We selected the average of these criteria because we believe that hospitals with below-average Medicaid or low-income utilization cannot be reasonably considered as disproportionate share hospitals under expanded State definitions, compared with other hospitals in the State.

In order to assure that the requirements of the proposed regulation at § 447.253(h) are met by the States, we are proposing to require States, pursuant to our existing authority in sections 1902(a)(4) and 1902(a)(6) of the Act to submit certain information. Specifically, we proposed to require, within 90 days after publication of this final rule, and annually thereafter, that a State agency submit to the HCFA Regional Office an

assurance and data to demonstrate that all hospitals eligible for disproportionate share adjustments under the State plan meet the requirements in § 447.253(h).

We are also considering options to establish a maximum level at less than the average Medicaid or low-income utilization rate for all hospitals in the State. This proposed rule effectively defines disproportionate to mean more than the average.

Nevertheless, we believe that a strong argument could be made for a higher standard. We specifically request comments on whether disproportionate share hospital payments should be limited to the top quartile of hospitals in the State in terms of Medicaid utilization or low-income utilization.

We also intend to publish shortly an interim final rule establishing specific disproportionate share hospital payment requirements enacted as part of OBRA 87 and revised by MCCA and the Omnibus Budget Reconciliation Acts of 1989 and 1990.

Section 1923 of the Act requires States to establish annually a list of all disproportionate share hospitals in the State and the amount of additional payments they receive. In the past we have not collected these data nationally. In an effort to understand better the potential effects of the proposed rule on States, we plan to require States to submit information on State disproportionate share hospital programs. Thus, States would be required to submit information for each disproportionate share hospital, including (a) the disproportionate share payment rates and amounts over the preceding 12-month period from July 1 to June 30; (b) the Medicaid utilization rate and low-income utilization rate used to calculate disproportionate share payments; and (c) other data used to determine whether the hospital qualifies for disproportionate share payments. In addition, we suggest that States submit currently available information when they comment on the proposed rule.

III. Regulatory Impact Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

An annual effect on the economy of $100 million or more;

A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all providers as small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provision of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

We believe that hospitals with below-average Medicaid or low-income utilization cannot reasonably be considered as disproportionate share hospitals under expanded State definitions, when compared to other hospitals in the state. (By "expanded definitions" we mean definitions in excess of the minimum definitions set out in section 1923 of the Act.) To permit a greater number of hospitals to qualify as disproportionate share hospitals would, in our view, not be consistent with the meaning of the statutory term "disproportionate share".

In light of the fact that we expect these provisions to affect only a few States, we believe that the economic impact on hospitals in those states will be minimal. However, we are currently unable to determine costs/savings as a result of these provisions due to the lack of any significant data.

For these reasons, we have determined that the threshold criteria under E.O. 12291 are not met and a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals.

Therefore, we have not prepared a regulatory flexibility analysis or an analysis of effects on small rural hospitals.

IV. Paperwork Reduction Act

The proposed rule at § 447.253(h)(3) imposes an information collection requirement (an assurance and data to demonstrate that a State complies with the proposed regulation) that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* When OMB has approved this requirement, we will publish a notice in the **Federal Register** to that effect. We estimate that since each State would need to provide an assurance concerning the operations of their hospital payment plans, only those States that already have expanded definitions would need to incur a burden in reporting data about hospitals qualifying under such definitions. We estimate that such a State would require three hours to collect the data.

Individuals wishing to comment on this estimate should send their comments to us and the OMB at the addresses listed under **"ADDRESSES"** in this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the **"DATES"** section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

List of Subjects in 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR part 447 would be amended as follows:

PART 447—PAYMENTS FOR SERVICES

A. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

B. Section 447.253 is amended by adding a new paragraph (h) to read as follows:

§ 447.253 Other requirements.

* * * * *

(h) *Disproportionate share hospital standards.* (1) In order for a State to qualify a hospital as a disproportionate share hospital under section 1923 of the

Act, and make it eligible to receive a disproportionate share payment adjustment, it must include in its State plan a definition of disproportionate share hospital. This definition must include hospitals having either—

(i) A Medicaid utilization percentage at least one standard deviation above the Statewide arithmetic mean; or

(ii) A low-income utilization rate (as defined in section 1923(b)(3)) above 25 percent.

(2) States may designate additional hospitals (other than those which meet the criteria in paragraph (h)(1) of this section), if the hospitals have either—

(i) A Medicaid utilization percentage at or above the Statewide arithmetic mean Medicaid utilization percentage; or

(ii) a low-income utilization rate at or above the Statewide arithmetic mean low-income utilization rate.

(3) The State agency must, within 90 days after publication of the final rule, and on an annual basis thereafter, submit to the HCFA an assurance and data that demonstrates that all hospitals eligible for disproportionate share payment adjustments under the State plan meet these requirements concerning designation of additional hospitals.

(Catalog of Federal Domestic Program No. 13.714, Medical Assistance Program)

Dated: October 25, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: October 29, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-26395 Filed 10-29-91; 1:00 pm]

BILLING CODE 4120-01-M

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Vol. 56, No. 211

Thursday, October 31, 1991

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H.R. 2426/Pub. L. 102-136
Military Construction Appropriations Act, 1992. (Oct. 25, 1991; 105 Stat. 637; 9 pages) Price: $1.00

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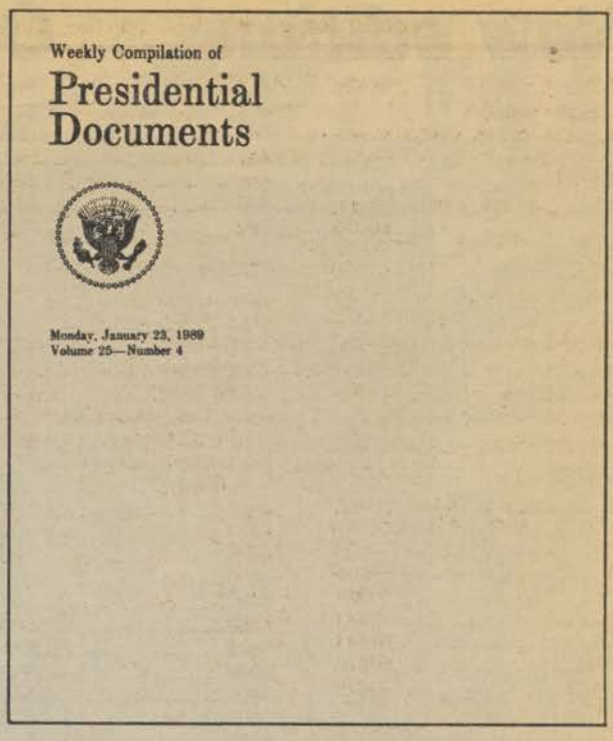

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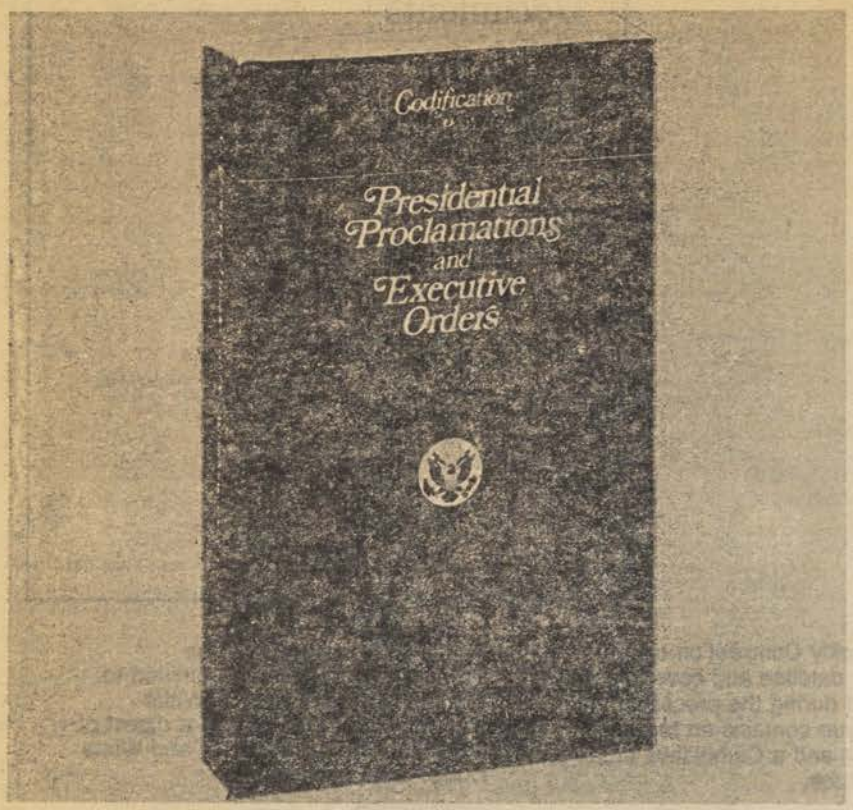

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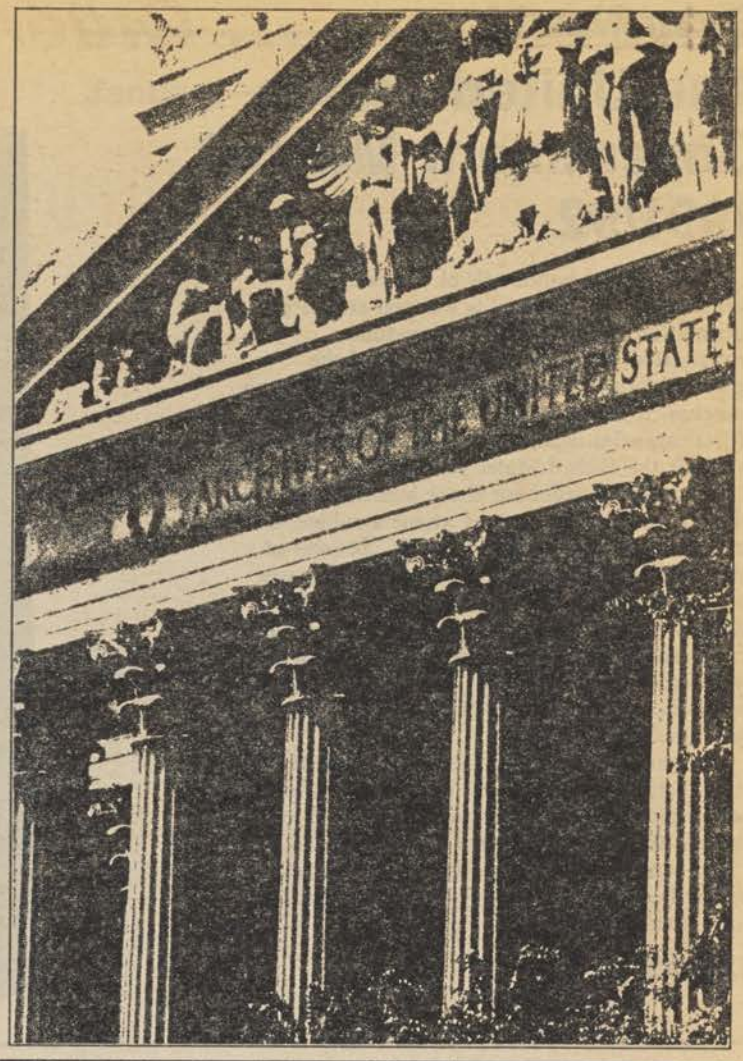

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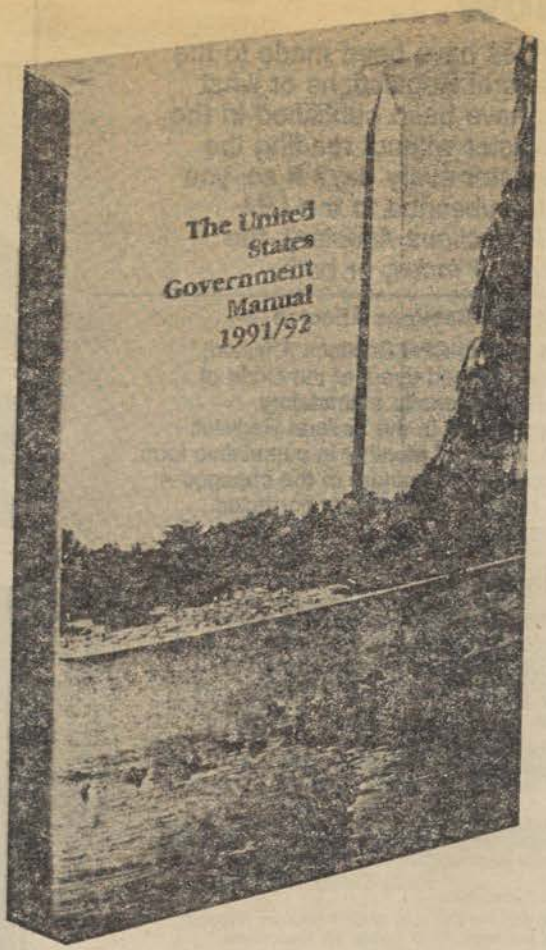

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